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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE  
AND FOREIGN RELATIONS

PARLIAMENT  
OF KENYA  
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REPORT ON THE PETITION BY MR. ISAIAH OCHANDA  
CONCERNING THE NON-FULFILMENT OF A COURT ORDER AND  
DECREE MADE IN 2011 AGAINST THE MINISTRY OF DEFENCE  
AND THE ATTORNEY GENERAL AND THE NON-PAYMENT OF  
DISABILITY PENSION FROM 1996 TO DATE

**Rt. Hon. Speaker**  
You may approve for tabling  
J. M. Nyegenye, C.B.S.,  
Clerk of the senate/secretary, PSC  
Date: 09/05/24

Clerk's Chambers,  
The Senate,  
Parliament Buildings,  
NAIROBI.

APPROVED  
RT. HON. SEN  
AMASON J. KINGI

May, 2024

14/05/24

PAPERS LAID	
DATE	15/5/2024
TABLED BY	Majority Whip
COMMITTEE	National Security
CLERK AT THE TABLE	Angela

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Mr. Hon. Speaker  
 National Assembly  
 Parliament of Kenya  
 Nairobi  
 28/11/2022

## **LIST OF ABBREVIATIONS AND ACRONYMS**

AG	- Attorney General
CAJ	- Commission on Administrative Justice
COK	- Constitution of Kenya
CS	- Cabinet Secretary
DOD	- Department of Defence
KDF	- Kenya Defence Forces
KNCHR	- Kenya National Commission on Human Rights
MOD	- Ministry of Defence

## PRELIMINARIES

### Establishment and Mandate of the Committee

The Standing Committee on National Security, Defence and Foreign Relations is established pursuant to Standing Order 228 (3) of the Senate Standing Orders and is mandated to “*consider all matters relating to national security and foreign relations, disaster reduction and preparedness, home affairs, defence, immigration and international relations*”.

### Membership of the Committee

The Committee is comprised of –

- |  |                    |
|--|--------------------|
| 1) Sen. William Cheptumo Kipkiror, CBS, MP   | - Chairperson      |
| 2) Sen. Karen Njeri Nyamu, MP                | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP           | - Member           |
| 4) Sen. Abdul Mohammed Haji, CBS, MP         | - Member           |
| 5) Sen. Julius Murgor Recha, CBS, MP         | - Member           |
| 6) Sen. Joseph Githuku Kamau, MP             | - Member           |
| 7) Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP | - Member           |
| 8) Sen. Lenku Ole Kanar Seki, MP             | - Member           |
| 9) Sen. George Mungai Mbugua, MP             | - Member           |

The Minutes of the Committee in considering the Petition by Mr. Isaiah Ochanda concerning the non-fulfilment of a court order and decree made in 2011 against the Ministry of Defence and the Attorney General and the non-payment of disability pension from 1996 to date are attached to this Report as *Annex I*.

## FOREWORD BY THE CHAIRPERSON

### **Hon. Speaker**

The Petition was presented in the Senate on Wednesday, 14<sup>th</sup> February, 2024, following which it was committed to the Standing Committee on National Security, Defence and Foreign Relations for consideration.

The key issue in the Petition relates to the non-fulfilment of a court order and decree made in 2011 against the Ministry of Defence and the Attorney General and the non-payment of disability pension from 1996 to date. In 1987, the Petitioner, then an employee of the Kenya Defence Forces sustained spinal cord injuries (tetraplegia) leaving him bedridden and in need of medical care. He was later discharged from service on medical grounds in 1995. The Ministry failed to pay his dues resulting in a suit whereby a judgement was delivered in favor of the Petitioner in 2011. However, the Ministry of Defence and the Office of the Attorney General made part payment of the Petitioner's dues and was yet to fully comply with the court orders.

The Petition by Mr. Isaiah Oduor Ochanda was thus a prayer to the Senate to compel the Ministry of Defence to settle the decretal amount awarded by the court in 2011 and to help him to get his disability pension outstanding from 1996 to date.

### **Hon. Speaker,**

In considering the Petition, the Committee first met with the Petitioner. This was to enable the Committee to better understand the issues raised in the Petition, the interventions that the Petitioner had sought so far and whether the same had been successful, and the remedies that he sought from the Committee and the Senate.

The Committee subsequently received written submissions from the Cabinet Secretary, Ministry of Defence and Attorney General on the Petition. These are summarized in Chapter Two of this Report.

### **Hon. Speaker,**

Having heard from the Petitioner and the other stakeholders, the Committee made various observations which are set out at Chapter Three of the Report. Notably, the Committee observed that-

- a) the Petitioner was an employee of the Kenya Defence Forces attached to the 75 Artillery Air Defence Unit when he sustained spinal cord injuries (tetraplegia) while training for the All Africa Games on 20<sup>th</sup> May, 1987. He was subsequently discharged from service on 13<sup>th</sup> April, 1995 on medical grounds;

- b) after unsuccessfully following up on his dues and medical benefits, the Petitioner sought legal redress vide Nairobi Hcc No. 1051 Of 1996 Isaiah Ochanda vs The Attorney General;
- c) the High Court in November 2011 awarded the Petitioner Ksh. 22, 916, 824.34 as compensation for the injuries and medical cover; and
- d) the validity and enforceability of the court orders directing the Ministry of Defence to pay the decretal amount to the Petitioner are not in dispute.

The Committee further observed that-

- a) the Petitioner has been paid part of the amount totaling to Ksh. 12, 852, 000, with an outstanding balance of Ksh. 11, 988, 394.71;
- b) the Ministry of Defence, vide its letter dated 28th February 2024 (Ref: MOD/M1/31A), proposes to settle the outstanding amount of Kshs. 11,588,876.71 in bi-annual installments of Kshs. 2,000,000; and
- c) the protracted history of this case, coupled with the Petitioner's repeated resort to judicial enforcement mechanisms and the Ministry's unfulfilled promises of settlement, paints a bad picture of the Ministry in terms of addressing the plight of a grievously injured veteran and goes against the Government's commitment to the welfare of its retired and disabled servicemen.

The other detailed observations by the Committee are contained in Chapter Three of the Report.

### **Hon. Speaker,**

Arising from its observations on the Petition, the Committee has made three key recommendations, namely –

- a) While acknowledging the commitment and proposal by the Ministry of Defence to settle the outstanding balance of Ksh. 11,988,394.71, as advised by the Office of the Attorney General, in bi-annual installments of Kshs. 2,000,000, the Committee recommends that the entire amount be paid within a period of **six months** from the date of tabling of this Report, with an initial deposit being made not later than the end of May, 2024.
- b) That the National Treasury and Economic Planning provides a status update on the functioning of the Pensions Management Information's System and when they intend to settle the Petitioner's disability pension and provides a status report to the Senate within **one month** of tabling of this Report.
- c) That the Ministry of Defence provides the necessary benefits to the Petitioner pursuant to the provisions of section 6 of the Military Veterans Act, 2022 and

provides a status provide a status report to the Senate within **six months** of tabling of this Report.

**Hon. Speaker,**

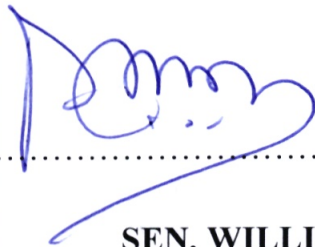
Allow me to thank the Members of the Committee for their diligence and insights during the consideration of this Petition. I also wish to thank the Petitioner for bringing this matter to the attention of the Senate. I further wish to thank the Cabinet Secretary, Ministry of Defence and the Attorney General for their submissions to the Committee.

I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support accorded to the Committee during consideration of this Petition.

**Hon. Speaker,**

It is now my pleasant duty, pursuant to Standing Order 238(2), to present the Report of the Standing Committee on National Security, Defence and Foreign Relations on the Petition by Mr. Isaiah Ochanda concerning the non-fulfilment of a court order and decree made in 2011 against the Ministry of Defence and the Attorney General and the non-payment of disability pension from 1996 to date for consideration by the Senate.

Signed.....



Date.....

08-05-22

**SEN. WILLIAM CHEPTUMO, CBS, MP  
CHAIRPERSON, STANDING COMMITTEE ON NATIONAL SECURITY,  
DEFENCE AND FOREIGN RELATIONS.**

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND FOREIGN RELATIONS ON THE PETITION BY MR. ISAIAH OCHANDA CONCERNING THE NON-FULFILMENT OF COURT ORDER AND DECREE MADE IN 2011 AGAINST THE MINISTRY OF DEFENCE AND THE ATTORNEY GENERAL AND THE NON-PAYMENT OF DISABILITY PENSION FROM 1996 TO DATE**

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**We, the undersigned Members of the Standing Committee on National Security, Defence and Foreign Relations, do hereby append our signatures to adopt this Report**

No	Name	Signature
1.	Sen. William Kipkiror Cheptumo, CBS, MP <i>(Chairperson)</i>	
2.	Sen. Karen Njeri Nyamu, MP <i>(Vice-Chairperson)</i>	
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. Abdul Mohamed Haji, CBS, MP	
5.	Sen. Julius Murgor Recha, CBS, MP	
6.	Sen. Joseph Githuku Kamau, MP	
7.	Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP	
8.	Sen. Lenku Ole Kanar Seki, MP	
9.	Sen. George Mungai Mbugua, MP	

## CHAPTER ONE: INTRODUCTION

### 1.1 Summary of the Petition

1. The right to present petitions to public authorities is provided for under Article 37 of the Constitution. Article 119(1) further provides that 'Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.
2. Parliament enacted the Petition to Parliament (Procedure) Act, No. 12 of 2012, to make provision for the procedure for the exercise of this right. Further, Part XXVII of the Senate Standing Orders also makes provision on how this right may be exercised.
3. Pursuant to the said provisions, at the sitting of the Senate held on Wednesday, 14<sup>th</sup> February, 2024, a petition was presented to the Senate on the non-fulfilment of a court order and decree made in 2011 against the Ministry of Defence and the Attorney General and the non-payment of disability pension from 1996 to date. A copy of the Petition is attached to this Report as *Annex 2*.
4. The key issues raised in the Petition were-
  - a) that the Petitioner Mr. Isaiah Oduor Ochanda, was an employee of the former Department of Defence (presently the Ministry of Defence (MOD));
  - b) that he sustained spinal cord injuries in 1987 (tetraplegia), leaving him bedridden and in need of medical care;
  - c) that, he received a discharge instruction letter in January, 1995 at night from a neighbor's child informing him that his services were no longer required;
  - d) that he then followed it up with his Commanding Officer, who informed him that he was to proceed on leave immediately pending his retirement date;
  - e) that, a day before his retirement date, he went back to collect his dues and was informed that they would only provide him with a ticket back to his village home while they processed subsequent dues, which unfortunately did not materialize;
  - f) that, after four (4) months, he sent immediate family members to the Department of Defence (DOD) Headquarters and to his dismay, they were told that such a document did not exist in their records and that he should personally visit their offices despite being completely bedridden;
  - g) that, for seven (7) months, he struggled to get medical discharge benefits. As per the law, he only had one (1) month left to claim anything from the Government, which ultimately led him to court;

- h) that, through an exhausting legal process, the courts ruled in his favor through a 2011 judgement (H.C.C.C. No. 1051 OF 1996 AT NAIROBI);
- i) that he personally appealed to the former Attorney General, Prof. Githu Muigai who instructed his officers and the MOD to pay him his dues;
- j) that, both the Ministry of Defence and the Office of the Attorney General, knowing that he was totally bedridden and in need of twenty four (24) hour medical attention, continuously frustrated his efforts to receive the rightful amount awarded by the court to facilitate his present and future medical expenses to the point where his files would mysteriously disappear and reappear in their offices;
- k) that, he had followed up with various Government Offices, such as the Office of the Attorney General, Commission for Administrative Justice (CAJ), Kenya National Commission for Human Rights (KNCHR), among other offices for assistance. Their appeals to the Attorney General and the Ministry of Defence had fallen on deaf ears;
- l) that, he was forced to go back to court for judicial review after many summons to appear in court to explain why they had not settled the decretal amount. A ruling was delivered on 14<sup>th</sup> July, 2023 (J.R. 148 of 2013);
- m) that he served the Ministry of Defence and the Hon. Attorney General with a court order compelling them to settle the decretal amount. The above-mentioned offices refused to take action on it;
- n) that, he went back to court and produced an order of mandamus, which ended up in a warrant of arrest, which to date hasn't been complied with. The Hon. Attorney General and the Ministry of Defence refused to take action. The warrant of arrest up to date has not been effected or complied with;
- o) that, after many years in court amid his suffering, pain, agony, torture and many verbal warnings from the Honourable Judges, MOD decided to pay him a small amount of money contrary and in total disregard to what was contained in the Court Order eleven (11) years later. Shockingly, they were adamant that they had fully satisfied the decree;
- p) that he made the best efforts to have the matter addressed by relevant authorities but was unsuccessful in getting a satisfactory response.

5. The Petitioner therefore prayed that the Senate –

- a) compels the Ministry of Defence to settle the decretal amount awarded by the courts in 2011; and
- b) helps him to get his disability pension outstanding from 1996 to date.

6. Pursuant to standing order 238(1) of the Senate Standing Orders, the Petition was committed to the Standing Committee on National Security, Defence and Foreign Relations for consideration.

## **1.2 Analysis of legal issues**

### **1.2.1 The Kenya Defence Forces Act**

7. Section 244 of the Kenya Defence Forces Act provides that-
  - (1) *The members of the Defence Forces shall be entitled to such pensions and gratuity as shall be determined by the National Treasury in consultation with the Defence Council in accordance with regulations.*
  - (2) *Where an officer or a service member has been dismissed under any circumstances provided for under this Act, the Defence Council may withhold, reduce the amount or suspend any such benefits payable to the officer or the service member under subsection (1).*
  - (3) *A decision to withhold, reduce in amount or suspend any benefits of an officer or a service member contemplated under subsection (2) shall be made with the concurrence of the Public Service Commission.*
8. Section 245 of the Kenya Defence Forces Act provides that-
  - (8) *A member of the Defence Forces who, through no misconduct on his or her part, sustains a wound or injury or contracts an illness while on military service or undergoing training is, under such conditions and for such period as may be prescribed by the Defence Council, entitled to be provided with medical, dental, psychological or other necessary treatment for such wound, injury or illness, with the consent of the Defence Council, notwithstanding that the duration of such treatment may extend beyond that member's service contract.*
  - (9) *A member of the regular forces who is receiving the treatment referred to in subsection (8) shall receive his or her pay and allowances on their becoming due and such period of treatment shall for all purposes be regarded as duty.*
  - (10) *The Government shall compensate members of the Defence Forces who lose their lives or suffer disabilities while undertaking military service or training.*

*(11) The compensation referred to under subsection (10) may be facilitated through insurance schemes or compensation agreements or arrangements as may be approved by the Defence Council from time to time.*

### **1.2.2 The Military Veterans Act, 2022**

9. Section 5 of the Military Veterans Act, 2022 provides that-

*(1) A Kenyan citizen shall be regarded as a military veteran for the purposes of this Act if that Kenyan citizen—*

- (a) has served in the Kenya Defence Forces;*
- (b) became a member of the Kenya Armed Forces after 1963;*
- (c) served in the King's African Rifles before 1963;*
- (d) has completed service in the Armed Forces or Kenya Defence Forces;*
- (e) receives a pension from the Armed Forces or Kenya Defence Forces; and*
- (f) has not been dishonourably discharged from military service.*

*(2) Despite subsection (1), a person who was discharged or retired from the Armed Forces or Kenya Defence Forces on medical grounds shall, whether or not that person receives a pension, be regarded as a military veteran.*

10. Section 6 of the Military Veterans Act, 2022 provides that-

*(1) Subject to the provisions of this Act, the following benefits may be conferred on a military veteran—*

- (a) counselling and treatment for post-traumatic stress or related conditions;*
- (b) physical rehabilitation for any condition arising out of military service;*
- (c) honouring and memorialising fallen military veterans;*
- (d) education, training and skills development;*
- (e) facilitation or advice on employment placement; and*
- (f) facilitation or advice on business opportunities.*

### **1.2.3 The Work Injury Benefits (CAP 236)**

11. Section 10 of the Work Injury Benefits, CAP 236 provides that-

*(1) An employee who is involved in an accident resulting in the employee's disablement or death is subject to the provisions of this Act, and entitled to the benefits provided for under this Act.*

*(2) An employer is liable to pay compensation in accordance with the provisions of this Act to an employee injured while at work.*

## CHAPTER TWO: CONSIDERATION OF THE PETITION

### 1.3 Introduction

12. The Petition was presented in the Senate on Wednesday, 14<sup>th</sup> February, 2024 following which it was committed to the Standing Committee on National Security, Defence and Foreign Relations for consideration.
13. In considering the Petition, the Committee received both written and oral evidence from the Petitioner, the Cabinet Secretary, Ministry of Defence and the Attorney General.

#### 1.3.1 Submissions by the Petitioner

- a) At its 76<sup>th</sup> sitting held on Tuesday, 5<sup>th</sup> March, 2024, the Committee met with the Petitioner to deliberate on the Petition.
- b) Upon invitation by the Committee the Petitioner submitted that-
  - a) he was an employee of the Kenya Army attached to the 75 Artillery Air Defence when he sustained spinal cord injuries on 20<sup>th</sup> May, 1987 while in the course of his duties as a coach for the All Africa Games. The injuries left him tetraplegic resulting in his discharge from duty in 1995 on medical grounds, with the letter communicating the same being delivered by a child;
  - b) despite completing all the necessary clearance documents and full trial, he was yet to be paid his lawful dues;
  - c) vide Civil Case No. 1051 of 1996 in the High Court of Kenya, judgment was rendered on 2<sup>nd</sup> March, 2011 awarding him Kshs. 22.9 million;
  - d) the Ministry of Defence and the Attorney-General failed to obey the court order despite him making several follow-ups and appeals through various offices, including the Commission on Administrative Justice (CAJ) and the Kenya National Commission on Human Rights (KNCHR);
  - e) in 2022, he was paid a sum of Kshs. 12.8 million by the Ministry of Defence but was denied his disability pension having been dismissed one year and one hundred and fifty two days before he was due for his pension. As such he was only paid pension for three (3) months instead of payment until death;
  - f) he further proceeded for judicial review and the ruling was delivered on 14<sup>th</sup> July, 2023, compelling the Ministry of Defence and the Office of the Attorney General to satisfy the decree in High Court Civil Case No. 1051 of 1996 which was yet to be implemented;

- g) that a warrant of arrest was issued against the Principal Secretary, Ministry of Defence, but the said orders had not been effected by the Inspector General of Police;
  - h) that he was owed approximately Kshs. 38 million to date;
  - i) following the accident, he has remained bedridden and unable to contribute to the wellbeing of his family as he was paralyzed from the neck down. He had suffered great psychological trauma as a result; and
  - j) the Petition had earlier been presented to the National Assembly in 2020 but was unsuccessful. He therefore thanked the Committee for its response on the matter.
- c) The Petitioner's spouse and son submitted that-
- a) the Petitioner was injured at the age of twenty seven (27) while training for the All Africa Games, 1987. Thereafter, he was hospitalized for two (2) years and discharged in 1989;
  - b) the Petitioner's dismissal from the Service on medical grounds was delivered by a seven (7) year old child and he was advised that he would not be paid his dues until he went home (up country) and was asked to report to the District Commissioner, Homa Bay;
  - c) the ensuing delays in payment led them to seek legal redress which resulted in judgment in favour of the Petitioner. Despite partial payment by the Ministry of Defence, there had been obvious delay tactics in play;
  - d) they had suffered immense psychological effects owing to the Petitioner's condition, with the son often missing university classes to care for him thus affecting his education since childhood; and
  - e) prayed that the Senate ensures that the Petitioner gets justice in the matter.
- d) The Petitioner therefore prayed that the Senate-
- a) compels the Ministry of Defence to settle the decretal amount awarded by the courts in 2011; and
  - b) helps him get his disability pension outstanding from 1996 to date.
- e) The Petitioner later submitted a computation amounting to Kshs. 43,065,061.14 broken down as follows-
- a) Ksh, 22,916,828.34 in respect of a certificate against the Government dated 14<sup>th</sup> November, 2011;
  - b) 2,750,019.40 in respect of 12% interest per annum of the Decretal amount;
  - c) 27,500, 194 in respect of simple interest up to 14<sup>th</sup> November, 2021;

- d) Less the amount paid to the petitioner of Ksh. 12,852,000; and
- e) Interest accrued between 2022 and 2024 of Ksh. 5,500,038.80.

A copy of the computation of the decretal sum is attached to this Report as **Annex 3**.

### **1.3.2 Submissions by the Cabinet Secretary, Ministry of Defence**

- f) The Committee received written submissions from the Cabinet Secretary, Ministry of Defence on the Petition. The Cabinet Secretary submitted that –
  - a) The matter in question relates to a suit — NAIROBI HCC NO. 1051 OF 1996 ISAIAH OCHANDA VS THE ATTORNEY GENERAL filed by the Petitioner.
  - b) The Petitioner was an employee of the Kenya Army attached to 75 Artillery Air Defence Unit. The Petitioner was discharged from Service on 13<sup>th</sup> April, 1995 on medical grounds after sustaining injuries during the All Africa Games 1987, where he participated as a Judo Trainer.
  - c) The matter went to full trial and judgement was delivered on 2<sup>nd</sup> March, 2011 in favour of the Petitioner on the following terms:
    - i. The defendant to pay the plaintiff the balance of pension due and payable to him,
    - ii. The defendant to pay the plaintiff the balance of medical expenses as of 1996 on the production of receipts;
    - iii. The defendant to pay the plaintiff general damages in respect of pain, suffering and loss of amenities in the sum of Kshs. 1,000,000;
    - iv. The defendant to pay the plaintiff special damages in the sum of Kshs. 6,500,000 in respect of future medical expenses; and
    - v. The defendant to pay the plaintiff costs and interests.

### **Non-fulfilment of Court Order and Decree**

- d) On 14<sup>th</sup> November, 2011, the High Court issued a Certificate of Order against the Government for the total sum of Kshs. 22,916,824.34. MOD made several attempts to pursue out of court settlement at Kshs. 12,000,000.00 which the claimant declined.
- e) In this regard, AGs opinion on the settlement was sought. The Ministry was advised that pursuant to section 4(4) of the Limitation of Actions Act, interest on actions arising from tort or contract are not payable six (6) years after they become due. The AG computed interests from the date of judgment, 2<sup>nd</sup> March, 2011, until the lapse of six years on 2<sup>nd</sup> March, 2017, to the tune of Kshs. 13,251,518.00 and advised MOD to pay. Owing to the limited

allocation in the Legal Dues vote, the Ministry settled the amount as advised by the AG in four (4) instalments by 16<sup>th</sup> September, 2021 as follows:

- |                                |                     |
|--------------------------------|---------------------|
| i. RGTS dated 04 June 20       | Ksh. 4, 852, 000.00 |
| ii. RGTS dated 01 March 21     | Ksh. 4, 000, 000.00 |
| iii. RGTS dated 22 April 21    | Ksh. 4, 000, 000.00 |
| iv. RGTS dated 16 September 21 | Ksh. 399, 518.00    |
- f) However, the Ex-Service Member maintained the claim for full payment as decreed by the court. He proceeded to file a Supplementary Affidavit maintaining that the decree still exists and it is not up to MOD to decide the extent to which it will satisfy the decree of court. The AG has subsequently advised the Ministry to settle the decree in full based on accrued interests on special damages from the time of filing suit on 28<sup>th</sup> April, 1996 until 2<sup>nd</sup> March, 2011, when the first disbursement was first calculated. The revised computation was based on judicial precedent upholding that interest on special damages accrues from filing suit (not the date of judgment) until six (6) years after the judgment.
- g) In light of the AGs guidance, the Ministry sought authorization from the AG to settle to the balance amounting to Kshs.11,588,876.71/= vide letter MOD/11/31A dated 28<sup>th</sup> February, 2024.
- h) MOD aims to expeditiously settle the outstanding decree amount upon receipt of the requisite approvals from both the AG and the National Treasury.

#### **Payment of Group Personal Accident Cover, Service Gratuity and Disability Pension**

- i) When the Service Member suffered the injury, a claim was pursued under the Group Personal Accident Cover and he was paid Kshs. 73,000 on 6<sup>th</sup> June, 1990.
- j) To be eligible for pension, it is prescribed that one must have served for twelve (12) years. Therefore, premised on his period in Service – ten (10) years 153 days, he was paid a Service Gratuity of Kshs. 79,375/=.
- k) However, out of humanitarian concerns owing to the gravity of the permanent injury, the Pensions Assessment Board granted him a Pension in lieu of the Gratuity in accordance with rule 35(4) of the then-applicable Armed Forces (Pensions and Gratuities) (Officers and Servicemen) Regulations, 1980. A fresh pension assessment was done in which he was awarded a lump sum of Kshs. 59,531.25 and a monthly pension of Kshs. 992.00. The amount previously paid as gratuity was recovered from the pension lump sum and nineteen (19) monthly pension payments.

- l) He was also awarded a disability pension of Kshs. 727.50 per month at the rate of 50% of monthly pay as at the date of injury.
  - m) Once the computation and assessment of pension is completed at the Ministry, the same is transmitted to the Director of Pensions for settlement.
21. A copy of the submissions from the Ministry of Defence is attached to this Report as *Annex 4*.

### **1.3.3 Submissions by the Attorney General**

22. The Committee received written submissions from the Attorney General. The Attorney General submitted that-
- a) The Petitioner is paraplegic. In 1984, he was employed by the Kenya Army as a soldier attached to the 75 Artillery Battalion. In 1987, he was granted permission to train the Kenya Wrestling Team which was to participate in the All-African Games in Nairobi.
  - b) On the 20<sup>th</sup> May 1987, while training the said team, he fell down and sustained severe neck injuries. He was rushed to the Forces Memorial Hospital Nairobi for treatment. It transpired that he had a dislocation in his spinal cord. He was to remain in the said hospital for two (2) years. He was also taken to the Spinal Injury Hospital, Nairobi for further medical attention. He never recovered and lost the ability to use his lower limbs.
  - c) It was the Petitioner's contention that an expert at the said Spinal Injury Hospital, Prof. Atinga recommended that he should be taken for specialized treatment in the United Kingdom. He asserted that the failure by the Department of Defence (DOD) to act as per Prof. Atinga's recommendation was a breach of the duty of care owed to him by the Department of Defence (DOD).
  - d) In light of the foregoing, the Petitioner sued DOD claiming damages for breach of duty of care, medical expenses, discharge and Medical Assessment Board benefits. A Statement of Defence dated 7<sup>th</sup>, October, 1997 was filed denying liability.
  - e) The suit was heard and Justice K. Rawal delivered her judgment on the 2<sup>nd</sup> March, 2013 in favour of the Petitioner, finding that although DOD was not negligent, it had breached the duty of care it owed to the Petitioner. The learned Judge therefore entered judgment in his favor whereby DOD was ordered to-
    - i. pay the plaintiff his pension dues;
    - ii. pay the plaintiff the balance of medical expenses as at 1996 on production of receipts;

- iii. pay the plaintiff general damages in respect of pain, suffering and loss of amenities being Ksh. 1,000,000.00;
  - iv. pay the plaintiff special damages in the sum of Ksh. 6, 500,000.00 being future medical expenses; and
  - v. pay the plaintiff costs of the suit plus interest.
- f) Aggrieved by the said judgment, DOD instructed the Office of the Attorney General to appeal which was done vide NAIROBI C.A. 330 of 2017, but the appeal had not been set down for hearing.
- g) In an effort to enforce the said judgment, the Petitioner, vide NAIROBI HC.JR. 229 of 2013, applied for an order of mandamus to compel the payment of the decretal sum. It was granted on the 21<sup>st</sup> November 2012 by Justice W.K. Korir.
- h) On the 8<sup>th</sup> December, 2014, the Petitioner wrote to the Attorney-General seeking his assistance to have the decretal sum paid. The Attorney-General vide his letter dated the 10<sup>th</sup> December, 2014 informed DOD of this development.
- i) On the 4<sup>th</sup> February, 2015, DOD instructed the Office of the Attorney General to pursue an out of court settlement. On the 30<sup>th</sup> April, 2015, a meeting was held between the Office of the Attorney General, the Petitioner, his advocate and a representative from the DOD. After discussions, DOD offered to pay settle the decretal sum at Ksh. 12,000,000.00 and the same was communicated to the Petitioner.
- j) On 25<sup>th</sup> May 2015, the Plaintiff wrote to the Office of the Attorney General rejecting the offer and gave a sum of Kshs. 21,916.828.34/= which DOD rejected thereby collapsing the negotiations.
- k) The Office of the Attorney General vide a letter dated 8<sup>th</sup> November, 2019 advised the DOD to settle the claim in the sum of Ksh. 13,251,581.00 computed for six years as per section 4 (4) of the Limitation of Actions Act as indicated:
- |   |                        |
|---|------------------------|
| General damages   | 1, 000, 000.00         |
| Interest on general damages... $1, 000, 000 * 12 / 100 * 6$ | 720, 000.00            |
| Special damages   | 6, 500, 000.00         |
| Interest on special damages... $6, 500, 000 * 12 / 100 * 6$ | 4, 680, 000.00         |
| Taxed costs   | 351, 518.00            |
| <b>Total</b>  | <b>13, 251, 518.00</b> |
- l) The Office of the Attorney General confirmed that so far, the DOD had remitted Ksh. 12,852,000 vide two instalments being Ksh. 4,852,000.00 remitted via RTGS dated 4<sup>th</sup> June, 2020 and Ksh. 8,000,000 remitted via RTGS dated 1<sup>st</sup> March, 2021.

- m) The sum of Ksh 12,852,000 was forwarded to the plaintiff on 24<sup>th</sup> March, 2022.
- n) Vide a letter dated the 11<sup>th</sup> October, 2023, DOD sought the guidance of the Office of the Attorney General on the accrual of interest on the special damages as awarded by the Court on 2<sup>nd</sup> March, 2011.
- o) On 13<sup>th</sup> December, 2023, the Office of the Attorney General advised DOD that the interest in the award of special damages (Kshs. 6,500,000/=) ought to have been from the date of filing suit i.e. (28<sup>th</sup> April, 1996 to 2<sup>nd</sup> March, 2017) subject to Section 4(4) of the Limitation of Actions Act and as such the Plaintiff was still owed interest in special damages from 28<sup>th</sup> April, 1996 up to 2<sup>nd</sup> March, 2011 being the date the calculations as per the letter of 8<sup>th</sup> November, 2019 stated.
- p) The amounts payable inclusive of interest on the special damages was Kshs. 11,988,394.71/= as particularized herein under-
- |  |                             |
|--|-----------------------------|
| General damages                          | Ksh. 1, 000, 0000           |
| Interest @12% WEF 02.03.2011             | Ksh. 720, 000               |
| 1, 000, 000*12/100*6                     |                             |
| Special damages                          | Ksh. 6, 500, 000            |
| Interest @12WEF 28.04.1996 to 01.03.2011 | Ksh. 16, 628, 876.71        |
| 6, 500, 000*12/100*6                     |                             |
| Costs                                    | Ksh. 351, 518.00            |
| Total decretal amount                    | Ksh. 24, 840,394.71         |
| Less amount paid                         | Ksh. 12, 852, 000           |
| <b>Balance</b>                           | <b>Ksh. 11, 988, 394.71</b> |
- q) Pursuant to advice vide the letter dated 13<sup>th</sup> December, 2023 to the DOD, the Office of the Attorney General received a letter dated 28<sup>th</sup> February, 2024 advising that DOD intends to settle the balance of the decretal sum being Kshs. 11,588,876.71 via instalments of Kshs. 2,000,000.00 bi-annually until payment in full.
- r) In 2017, the Attorney-General gazetted counsel in the Ministry of Defence as Special State Counsel who thus took over the conduct of all the files where DOD was a party including this matter. A notice of change of advocates dated 11<sup>th</sup> December, 2022 was served to the Office of the Attorney General on the 16<sup>th</sup> December, 2020.

23. A copy of the submissions from the Office of the Attorney General is attached to this Report as *Annex 5*.

### CHAPTER THREE: COMMITTEE OBSERVATIONS

24. Having considered the Petition and the responses and submissions received thereon, the Committee made observations as set out below-

- a) The Petitioner was an employee of the Kenya Defence Forces attached to the 75 Artillery Air Defence Unit when he sustained spinal cord injuries (tetraplegia) while training for the All Africa Games on 20<sup>th</sup> May, 1987. He was subsequently discharged from service on 13<sup>th</sup> April, 1995 on medical grounds. After unsuccessfully following up on his dues and medical benefits, the Petitioner sought legal redress vide *Nairobi HCC No. 1051 of 1996 Isaiah Ochanda vs the Attorney General*.
- b) The High Court on 14<sup>th</sup> November, 2011 issued a Certificate of Order against the Government for the total sum of Kshs. 22,916,824.34. The Ministry of Defence made attempts to pursue an out of court settlement of Kshs. 12,000,000.00 which the Petitioner declined. On 25<sup>th</sup> May, 2015, the Petitioner wrote to the Attorney General requesting for a sum of Kshs. 21,916,824.34, which was rejected by the Ministry of Defence thereby collapsing the negotiations.
- c) The validity and enforceability of the court orders directing the Ministry of Defence to pay the decretal amount to the petitioner are not in dispute. The judgment and decree in HCCC No. 1051 of 1996 delivered on 2<sup>nd</sup> March, 2011, as well as the order of mandamus issued in Judicial Review No. 229 of 2012 on 21<sup>st</sup> November, 2012, constitute legally binding obligations on the Ministry to settle the outstanding sums.
- d) The Ministry of Defence has so far paid the Petitioner a total of Kshs. 12,852,000 leaving an outstanding balance of Kshs. 1,988,394.71.
- e) The Ministry, vide its letter dated 28<sup>th</sup> February, 2024 (Ref: MOD/M1/31A), proposes to settle the outstanding amount of Kshs. 11,588,876.71 in bi-annual installments of Kshs. 2,000,000.
- f) There has been inconsistency on the amount quoted by the Petitioner with regard to the outstanding decretal amount. In the Petition, the Petitioner claimed that the figure was over Kshs. 10 million, he did not provide the exact figure. At the meeting held on 5<sup>th</sup> March, 2024, he claimed that the figure was approximately Kshs. 38 million and later gave a computation amounting to Kshs. 43,065,061.14 broken down as follows-

1. Ksh, 22,916,828.34 in respect of a certificate against the Government dated 14<sup>th</sup> November, 2011;
2. 2,750,019.40 in respect of 12% interest per annum of the Decretal amount;
3. 27,500, 194 in respect of simple interest up to 14<sup>th</sup> November, 2021;
4. Less the amount paid to the petitioner of Ksh. 12,852,000; and
5. Interest accrued between 2022 and 2024 of Ksh. 5,500,038.80.

A copy of the computation of the decretal sum is attached to this Report as **Annex 3**.

- g) The inordinate delay in the payment of the Petitioner's disability pension, which he is entitled to under the Armed Forces (Pensions and Gratuities) Regulations, is a matter of grave concern. We take note of the National Treasury's acknowledgment of the challenges experienced in processing these pension payments through the Pensions Management Information's System owing to programming related issues, a situation that calls for urgent intervention.
- h) The Attorney General has indicated that the conduct of the legal proceedings in respect of this matter has been taken over by the legal team at the Ministry of Defence. However, under the Constitution of Kenya, the Attorney is the Chief Legal Advisor of the Government and therefore still owes the duty to advise the Ministry of Defence to comply with the court orders.
- i) The protracted history of this case, coupled with the Petitioner's repeated resort to judicial enforcement mechanisms and the Ministry's unfulfilled promises of settlement, paints a bad picture of the Ministry in terms of addressing the plight of a grievously injured veteran and goes against the Government's commitment to the welfare of its retired and disabled servicemen.
- j) Section 6 of the Military Veterans Act, 2022 provides for benefits to military veterans including counselling and treatment for post-traumatic stress or related conditions; physical rehabilitation for any condition arising out of military service; honouring and memorializing fallen military veterans; among others. The Act should be properly implemented to take care of the interests of the military veterans and their families and avert their suffering such as is the case in this Petition. The Petitioner falls within the definition of a military veteran and as such should be entitled to the aforementioned benefits.

#### CHAPTER FOUR: RECOMMENDATIONS

28. Arising from its observations as set out in the preceding Chapter, the Standing Committee on National Security, Defence and Foreign Relations recommends the following-
- d) While acknowledging the commitment and proposal by the Ministry of Defence to settle the outstanding balance of Ksh. 11,988,394.71, as advised by the Office of the Attorney General, in bi-annual installments of Kshs. 2,000,000, the Committee recommends that the entire amount be paid within a period of **six months** from the date of tabling of this Report, with an initial deposit being made not later than the end of May, 2024.
  - e) That the National Treasury and Economic Planning provides a status update on the functioning of the Pensions Management Information's System and when they intend to settle the Petitioner's disability pension and provides a status report to the Senate within **one month** of tabling of this Report.
  - f) That the Ministry of Defence provides the necessary benefits to the Petitioner pursuant to the provisions of section 6 of the Military Veterans Act, 2022 and provides a status provide a status report to the Senate within **six months** of tabling of this Report.

## **LIST OF ANNEXES**

- Annex 1:** Minutes of the Committee in Considering the Petition
- Annex 2:** Copy of the Petition
- Annex 3:** Computation of the decretal sum by the Petitioner
- Annex 4:** Submissions by the Cabinet Secretary, Ministry of Defence
- Annex 5:** Submissions by the Attorney General

# **ANNEX 1**

Minutes of the Committee in considering the Petition



13<sup>TH</sup> PARLIAMENT | 3<sup>RD</sup> SESSION

**MINUTES OF THE 75<sup>TH</sup> SITTING OF THE STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND FOREIGN RELATIONS HELD ON THURSDAY, 29<sup>TH</sup> FEBRUARY, 2024 AT 12.00 P.M. ON THE ZOOM ONLINE MEETING PLATFORM**

**PRESENT**

1. Sen. Karen Nyamu, MP - Vice-Chairperson
2. Sen. Fatuma Adan Dullo, CBS, MP
3. Sen. Joseph Githuku Kamau, MP
4. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP
5. Sen. George Mungai Mbugua, MP - Ag. Chairperson

**ABSENT WITH APOLOGY**

1. Sen. William Cheptumo Kipkiror, CBS, MP - Chairperson
2. Sen. Abdul Haji, CBS, MP
3. Sen. Julius Murgor Recha, CBS, MP
4. Sen. Lenku Ole Kanar Seki, MP

**SECRETARIAT**

1. Ms. Carol Kiorei - Clerk Assistant I
2. Mr. Khatib Omar - Clerk Assistant III
3. Mr. Alex Mutuku - Senior Serjeant-at-Arms
4. Mr. Gilbert Juma - Legal Counsel II
5. Mr. Charles Oyosi - Audio Officer
6. Mr. Elvis Murakana - Hansard Officer
7. Ms. Judith Aoka - Hansard Officer
8. Ms. Lydia Kagumba - Public Relations Officer
9. Mr. Ralph Lenaiyarra - Attachee

**MIN. NO.SEN/NSDFR/348/2024**

**PRELIMINARIES**

The Ag. Chairperson called the meeting to order at 12.08 p.m. followed by a word of prayer.

**MIN. NO.SEN/NSDFR/349/2024**

**ADOPTION OF THE AGENDA**

The agenda for the meeting was proposed by Sen. Karen Nyamu, MP and seconded by Sen. Joseph Githuku Kamau, MP as follows-

1. Prayer
2. Adoption of the Agenda
3. Confirmation of Minutes of the previous meetings
  - *Minutes of the 71<sup>st</sup> sitting held on 13<sup>th</sup> February, 2024*
  - *Minutes of the 72<sup>nd</sup> sitting held on 15<sup>th</sup> February, 2024*
  - *Minutes of the 73<sup>rd</sup> sitting held on 22<sup>nd</sup> February, 2024*
4. Matters arising from the previous Minutes
5. Consideration of a Petition concerning non-fulfilment of a court order and decree against the Ministry of Defence and the Attorney General and non-payment of disability pension (*Committee Paper No. 81*)
6. Any Other Business
7. Date of the Next Meeting and Adjournment

**MIN.NO.SEN/NSDFR/350/2024**

**CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS**

This agenda item was deferred to the next meeting.

**MIN.NO.SEN/NSDFR/351/2024**

**CONSIDERATION OF A PETITION CONCERNING NON-FULFILMENT OF A COURT ORDER AND DECREE AGAINST THE MINISTRY OF DEFENCE AND THE ATTORNEY GENERAL AND NON-PAYMENT OF DISABILITY PENSION.**

The Committee considered Paper No. 81 (*Consideration of a Petition concerning non-fulfilment of a court order and decree against the Ministry of Defence and the Attorney General and non-payment of disability pension*).

The Committee-

1. noted the contents of the Paper; and
2. resolved that an invitation be extended to the Petitioner to appear before it to deliberate on the issues raised in the Petition;

3. resolved that an invitation be extended to the Cabinet Secretary, Ministry of Defence to appear before it to address the issues raised in the Petition.

MIN.NO.SEN/NSDFR/352/2024

DATE OF THE NEXT MEETING AND  
ADJOURNMENT

The Chairperson adjourned the meeting at 12.22 p.m. The next meeting would be held on Tuesday, 5<sup>th</sup> March, 2024 at 12.00 noon.

SIGNED: ..... 

DATE: 26-03-2024 .....



13<sup>TH</sup> PARLIAMENT | 3<sup>RD</sup> SESSION

**MINUTES OF THE 76<sup>TH</sup> SITTING OF THE STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY, 5<sup>TH</sup> MARCH, 2024 AT 12.00 P.M. IN BILATERAL ROOM 4, KICC BUILDING**

**PRESENT**

- |                                    |                    |
|------------------------------------|--------------------|
| 1. Sen. Karen Nyamu, MP            | - Vice-Chairperson |
| 2. Sen. Fatuma Adan Dullo, CBS, MP |                    |
| 3. Sen. Lenku Ole Kanar Seki, MP   | - Ag. Chairperson  |
| 4. Sen. George Mungai Mbugua, MP   |                    |

**ABSENT WITH APOLOGY**

- |  |               |
|--|---------------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP   | - Chairperson |
| 2. Sen. Abdul Haji, CBS, MP                  |               |
| 3. Sen. Joseph Githuku Kamau, MP             |               |
| 4. Sen. Julius Murgor Recha, CBS, MP         |               |
| 5. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP |               |

**SECRETARIAT**

- |                         |                            |
|-------------------------|----------------------------|
| 1. Ms. Carol Kirorei    | - Clerk Assistant I        |
| 2. Mr. Khatib Omar      | - Clerk Assistant III      |
| 3. Mr. Gilbert Juma     | - Legal Counsel II         |
| 4. Mr. Matano Kataa     | - Research Officer         |
| 5. Mr. Javan Loriko     | - Serjeant-at-Arms         |
| 6. Mr. Charles Oyosi    | - Audio Officer            |
| 7. Ms. Lydia Kagumba    | - Public Relations Officer |
| 8. Mr. Ralph Lenaiyarra | - Attachee                 |

**IN ATTENDANCE**

- |                             |                       |
|-----------------------------|-----------------------|
| 1. Mr. Isaiah Oduor Ochanda | - Petitioner          |
| 2. Ms. Elizabeth Ochanda    | - Petitioner's spouse |
| 3. Mr. John Moshe           | - Petitioner's son    |

**MIN. NO.SEN/NSDFR/353/2024**

**PRELIMINARIES**

The meeting was called to order at 12.26 p.m. followed by a word of prayer and introduction of the Members and attendees present.

**MIN. NO.SEN/NSDFR/354/2024**

**ADOPTION OF THE AGENDA**

The agenda for the meeting was proposed by Sen. Fatuma Adan Dullo, CBS, MP and seconded by Sen. George Mungai Mbugua, MP as follows-

1. Prayer
2. Adoption of the Agenda
3. Confirmation of Minutes of the previous meetings
  1. *Minutes of the 71<sup>st</sup> sitting held on 13<sup>th</sup> February, 2024*
  2. *Minutes of the 72<sup>nd</sup> sitting held on 15<sup>th</sup> February, 2024*
  3. *Minutes of the 73<sup>rd</sup> sitting held on 22<sup>nd</sup> February, 2024*
  4. *Minutes of the 74<sup>th</sup> sitting held on 27<sup>th</sup> February, 2024*
4. Matters arising from the previous Minutes
5. Meeting with the Petitioner to deliberate on the Petition concerning the non-fulfilment of a court order and decree by the Ministry of Defence and Attorney General and non-payment of disability pension (*Committee Paper No. 82*)
6. Any Other Business
7. Date of the Next Meeting and Adjournment

**MIN.NO.SEN/NSDFR/355/2024**

**CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS**

This agenda item was deferred to the next meeting.

**MIN.NO.SEN/NSDFR/356/2024**

**MEETING WITH THE PETITIONER TO DELIBERATE ON THE PETITION CONCERNING THE NON-FULFILMENT OF A COURT ORDER AND DECREE BY THE MINISTRY OF DEFENCE AND ATTORNEY GENERAL AND NON-PAYMENT OF DISABILITY PENSION**

The Acting Chairperson welcomed the Petitioner to the meeting and thanked him for having confidence in the Senate to resolve the issues raised in the Petition. He assured the Petitioner that the Senate would handle the matter decisively. He then welcomed the Petitioner to make his remarks.

The Petitioner thanked the Committee for the invitation to appear before it and briefed the meeting as summarized below-

1. he was an employee of the Kenya Army attached to the 75 Artillery Air Defence when he sustained spinal cord injuries on 20<sup>th</sup> May, 1987 while in the course of his duties as a coach for the All Africa Games. The injuries left him paraplegic resulting in his discharge from duty in 1995 on medical grounds, with the letter communicating the same being delivered by a child;
2. vide Civil Case No. 1051 of 1996 in the High Court of Kenya, judgment was rendered on 2<sup>nd</sup> March, 2011 awarding him Kshs. 22.9 million;
3. despite completing all the necessary clearance documents and full trial, he was yet to be paid his lawful dues;
4. the Ministry of Defence and the Attorney-General failed to obey the court order despite him making several follow-ups and appeals through various offices, including the Commission on Administrative Justice (CAJ) and the Kenya National Commission on Human Rights (KNCHR);
5. in 2022, he was paid a sum of Kshs. 12.8 million by the Ministry of Defence but was denied his disability pension having been dismissed one year and one hundred and fifty two days before he was due for his pension; as such he was only paid pension for three (3) months instead of payment until death;
6. he further went for judicial review and the ruling was delivered on 14<sup>th</sup> July, 2023, compelling the Ministry of Defence and the Office of the Attorney General to satisfy the decree in High Court Civil Case No. 1051 of 1996 which was yet to be implemented;
7. that a warrant of arrest was issued against the Principal Secretary, Ministry of Defence, but the said orders had not been effected by the Inspector General of Police;
8. that he was owed approximately Kshs. 38 million to date;
9. following the accident, he has remained bedridden and unable to contribute to the wellbeing of his family as he was paralyzed from the neck down. He had suffered great psychological trauma as a result;
10. the Petition had earlier been presented to the National Assembly in 2020 but was unsuccessful, and as such thanked the Committee for its response to the matter.

#### **Remarks by the Petitioner's spouse and son**

The Petitioner's spouse and son-

1. thanked the Committee for giving them audience and taking up the Petition;
2. stated that the Petitioner was injured at the age of twenty seven (27) while training fro the All Africa Games, 1987. Thereafter he was hospitalized for two (2) years and discharged in 1989;
3. stated that the Petitioner's dismissal from the Service on medical grounds was delivered by a seven year old child and he was advised that he would not be paid his dues until he went home (up country) and was asked to report to the District Commissioner, Homa Bay;

4. added that the ensuing delays in payment led them to seek legal redress which resulted in judgment in favour of the Petitioner. Despite partial payment by the Ministry of Defence, there had been obvious delay tactics in play;
5. stated that they had suffered immense psychological effects owing to the Petitioner's condition, with the son sometimes missing university classes so as to care for him thus affecting his education since childhood; and
6. prayed that the Senate ensures that the Petitioner gets justice in the matter.

**Resolution**

Following deliberations, the Committee resolved-

1. that the Petitioner submits the following documents in support of his Petition-
  - a) a copy of the discharge instruction;
  - b) copies of all court orders and rulings;
  - c) copies of all correspondences between the Petitioner, the Office of the Attorney General, and the Ministry of Defence; and
  - d) evidence of any monies received as partial settlement on his claim.
2. that an invitation be extended to the Attorney General to appear before the Committee with the Cabinet Secretary, Ministry of Defence on Thursday, 28<sup>th</sup> March, 2024.

**MIN.NO.SEN/NSDFR/357/2024**

**DATE OF THE NEXT MEETING AND  
ADJOURNMENT**

The Acting Chairperson adjourned the meeting at 1.34 p.m. The next meeting would be held on Thursday, 7<sup>th</sup> March, 2024 at 12.00 noon.



**SIGNED:** .....

**DATE:** ..... 26/03/2024 .....



13<sup>TH</sup> PARLIAMENT | 3<sup>RD</sup> SESSION

**MINUTES OF THE 86<sup>TH</sup> SITTING OF THE STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND FOREIGN RELATIONS HELD ON SUNDAY, 28<sup>TH</sup> APRIL, 2024 AT 10.00 A.M. IN BARAZA CONFERENCE ROOM 1, SAROVA WHITESANDS BEACH RESORT AND SPA**

**PRESENT**

1. Sen. Karen Nyamu, MP - Vice-Chairperson
2. Sen. Abdul Haji, CBS, MP
3. Sen. Julius Murgor Recha, CBS, MP
4. Sen. Joseph Githuku Kamau, MP
5. Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP
6. Sen. George Mungai Mbugua, MP

**ABSENT WITH APOLOGY**

1. Sen. William Cheptumo Kipkiror, CBS, MP - Chairperson
2. Sen. Fatuma Adan Dullo, CBS, MP
3. Sen. Lenku Ole Kanar Seki, MP

**SECRETARIAT**

1. Mr. Njenga Njuguna - Director, DGAC
2. Mr. Ahmed Odhowa - Principal Clerk Assistant II
3. Ms. Carol Kirorei - Clerk Assistant I
4. Mr. Khatib Omar - Clerk Assistant III
5. Mr. Alex Mutuku - Senior Serjeant-at-Arms
6. Mr. Gilbert Juma - Legal Counsel II
7. Mr. Matano Kataa - Research Officer III
8. Mr. Emmanuel Barasa - Media Relations Officer III
9. Mr. Charles Oyosi - Audio Officer

**MIN. NO.SEN/NSDFR/410/2024**

**PRELIMINARIES**

The meeting was called to order at 10.10 a.m. followed by a word of prayer.

**MIN. NO.SEN/NSDFR/411/2024**

**ADOPTION OF THE AGENDA**

The agenda for the meeting was adopted having been proposed by Sen. George Mungai Mbugua, MP and seconded by Sen. Abdul Haji, CBS, MP as follows-

1. Prayer
2. Adoption of the Agenda
3. Consideration and adoption of the Report on the Petition by Mr. Isaiah Ochanda concerning the non-fulfilment of a court order and decree made in 2011 against the Ministry of Defence and the Attorney General and the non-payment of disability pension from 1996 to date
4. Any Other Business
5. Date of the Next Meeting and Adjournment

**MIN.NO.SEN/NSDFR/412/2024**

**CONSIDERATION AND ADOPTION OF THE REPORT ON THE PETITION BY MR. ISAIAH OCHANDA CONCERNING THE NON-FULFILMENT OF A COURT ORDER AND DECREE MADE IN 2011 AGAINST THE MINISTRY OF DEFENCE AND THE ATTORNEY GENERAL AND THE NON-PAYMENT OF DISABILITY PENSION FROM 1996 TO DATE**

The Committee considered the Report on the Petition by Mr. Isaiah Ochanda concerning the non-fulfilment of a court order and decree made in 2011 against the Ministry of Defence and the Attorney General and the non-payment of disability pension from 1996 to date.

The Committee adopted the Report as presented, after being proposed by Sen. George Mungai Mbugua, MP and seconded by Sen. Sen. Abdul Haji, CBS, MP.

**MIN.NO.SEN/NSDFR/413/2024**

**ANY OTHER BUINESS**

There was no other business discussed at the meeting.

**MIN.NO.SEN/NSDFR/414/2024**

**DATE OF THE NEXT MEETING AND ADJOURNMENT**

The Session Chairperson adjourned the meeting at 11.30 a.m. The next meeting would be held on Sunday, 28<sup>th</sup> April, 2024 at 2.00 p.m.

~~Handwritten signature~~

SIGNED: .....

7/5/2024

DATE: .....

50

00

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# **ANNEX 2**

Copy of the Petition

The Clerk of the Senate

Parliament Buildings

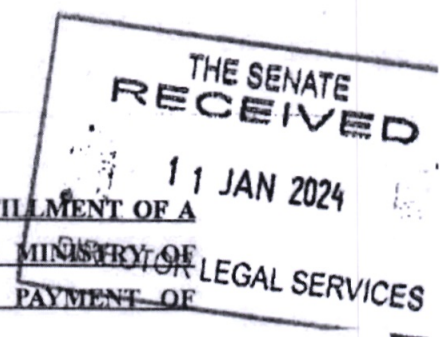
P.O. Box 41842-00100

NAIROBI

Email: senate.petitions@parliament.go.ke



11 JAN 2024



**RE: PETITION TO THE SENATE CONCERNING THE NON-FULFILLMENT OF A COURT ORDER AND DECREE MADE IN 2011 AGAINST THE MINISTRY OF DEFENSE AND THE ATTORNEY GENERAL AND THE NON PAYMENT OF DISABILITY PENSION FROM 1996 TO DATE.**

I, the undersigned, Citizen of the Republic of Kenya and resident of Nairobi,

Draw the attention of the Senate to the following:

1. I, Isaiah Oduor Ochanda, was an employee of the former Department of Defence (D presently the Ministry of Defense (MoD).

1.1 THAT, I sustained spinal cord injuries in 1987 (tetraplegia), leaving me bedridden and in need of medical care.

1.2 THAT, I received a discharge instruction letter in January 1995 at night from a child of my neighbour informing me that my services were no longer required. I would then follow up with my Commanding Officer, who informed me that I was to proceed on leave immediately pending my retirement date.

1.3 THAT, A day before my retirement date, I went back to collect all my remaining dues. They informed me that they would only provide me with a return ticket back to my village home while they processed subsequent dues, which unfortunately did not materialize.

1.4 THAT, After 4 months, I sent my immediate family members to DoD Headquarters. To my dismay, they were told that such a document did not exist in their records and that I personally should visit their offices despite being completely bedridden.

1.5 THAT, For seven months, I struggled to get medical discharge benefits, and as per law, I only had one month left to claim anything from the government, which ultimately led me to court.

1.6 THAT, Through an exhausting legal process, the courts ruled in my favor through a 2011 ruling (H.C.C.C. No. 1051 OF 1996 AT NAIROBI). I personally appealed to the former attorney General, Prof. Githu Muigai who instructed his officers and the MOD to pay.

1.7, THAT, Both the Ministry of Defense and the Office of the Attorney General, knowing that I am totally bedridden and in need of 24 hours of medical attention, continuously frustrated my efforts to receive the rightful amount awarded by the court to facilitate my present and future medical expenses to the point where my files would mysteriously disappear and reappear in their offices.

1.8 THAT, I have followed up with various Government offices, such as the Office of the Attorney General, Commission for Administrative Justice (CAJ), also known as the Office of the Ombudsman), National Commission for Human Rights (NCHR), among other offices for

assistance. Their appeals to the Attorney General and the Ministry of Defense have fallen on deaf ears.

1.9 THAT, I was forced to go back to court for **judicial review** after many summons to appear in court to explain why they had not settled the decree. A **ruling** was delivered on **July 14, 2023 (J.R. 148 of 2013)**. I served the Ministry of Defense and the Hon. Attorney General with a court order compelling them to settle the decretal amount. The above mentioned offices refused to take action on it.

1.10. THAT, I went back to court and produced an **order of mandamus**, which ended up in a warrant of arrest, which to date hasn't been complied with. The Hon. Attorney General and the Ministry of Defense refused to take action. The warrant of arrest up to date has not been effected or complied with.

1.11 THAT, After many years in court amid my sufferings, pain, agony, torture and many verbal warnings from the Honourable Judges, MOD decided to pay me small amount of money contrary and in total disregard to what was contained in the Court Order **11** years later. Shockingly, they are adamant that they have fully satisfied the decree.

1.12 THAT, I have important documents to share with the Senate to prove this grave injustice when called upon.

2. That I have made the best efforts to have these matters addressed by the relevant authorities, all of which have failed to give a satisfactory response.

Petition to the Senate by [ ] concerning  
[ ]

3. THAT none of these issues raised in this petition is pending in any court of law, constitutional, or any other legal body.

**WHEREFORE, your humble petitioner prays that the Senate**

- Compels the Ministry of Defense to settle the decretal amount awarded by the courts in 2011.
- Helps me get disability pension outstanding from 1996 to date.

Dated this 10 day of January 2024.

No	NAME	ADDRESS	I.D. No.	SIGNATURE
	Isaiah Oduor Ochanda	<a href="mailto:isaiahochanda2@gmail.com">isaiahochanda2@gmail.com</a> 0733785844 0721885750	33306743	

If presented by a Senator:

Countersigned by Senator ....., Senator for ..... County.

Senator....., Senator for..... County.

# **ANNEX 3**

Computation of the decretal sum by the Petitioner

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO.1051      OF 1996**

ISAIAH ODUOR OCHANDA..... PLAINTIFF

**VERSUS**

THE ATTORNEY GENERAL .....DEFENDANT

**Computation of Outstanding Decretal Sum**

1. Certificate against the government (14 <sup>th</sup> November 2011)	- <b><u>22,916,828.34</u></b>
2. 12% of Decretal sum (per annum)	- 2,750,019.40
3. Interest (simple), up to 14 <sup>th</sup> November 2021	- 27,500,194.00
4. Decretal sum plus Interest (22,916,828.34 +27,500,194.00)	- 50,417,022.34
5. Less paid <b><u>(12,852,000)</u></b> (50,417,022.34 -12,852,000)	- 37,565,022.34
6. Interest for 2022-2024	- 5,500,038.80
<b>Total outstanding</b>	- <b><u>43,065,061.14</u></b>

# **ANNEX 4**

Submissions by the Cabinet Secretary, Ministry of Defence

~~CONFIDENTIAL~~

## MINISTRY OF DEFENCE OFFICE OF THE PRINCIPAL SECRETARY

Telegrams: "DEFENCE", Nairobi  
Telephone: Nairobi 2721100  
Email: ps@mod.go.ke  
Fax: 020-2723446

ULINZI HOUSE  
P.O. Box 40668 - 00100,  
NAIROBI, KENYA

MOD/11/31A

28<sup>th</sup> February, 2024

Hon. Shadrack Mose  
Solicitor General  
P.O Box 40112 – 00100  
NAIROBI



Dear SG

NAIROBI HCCC NO. 1051 OF 1996  
ISAIAH O. OCHANDA – VS - HON. ATTORNEY GENERAL

Receipt of your letter dated 13<sup>th</sup> December, 2023 is hereby acknowledged.

We, however, note that the total sum paid to the Claimant as at 16<sup>th</sup> September, 2021 was Kshs 13,251,518.00 and not Kshs 12,852,000.00 as indicated in your letter. The same is broken down as follows: -

RTGS dated 4 <sup>th</sup> June 2020	- Kshs. 4,852,000.00
RTGS dated 01 March 2021	- Kshs. 4,000,000.00
RTGS dated 22 April 2021	- Kshs. 4,000,000.00
RTGS dated 16 September 2021	- Kshs. <u>399,518.00</u>
<b>TOTAL</b>	<b><u>Kshs.13,251,518.00</u></b>

The balance therefore, stands at Kshs 11,588,876.71 which the Ministry is amenable to pay in instalments of Kshs 2,000,000.00 bi-annually until payment in full. Kindly let us have your authority to proceed as proposed.

Attached herewith for ease of reference are:

- a. Letter dated 13<sup>th</sup> December, 2023.
- b. Letter dated 8<sup>th</sup> November, 2019.
- c. RTGS dated 4<sup>th</sup> June, 2020.
- d. RTGS dated 1<sup>st</sup> March, 2021.
- e. RTGS dated 22<sup>nd</sup> April, 2021.
- f. RTGS dated 16 September, 2021.

relation to payment of interest on special damages is, in our view, unupportable. Quite apart from the fact that the claim for special damages was not proved by any evidence beyond being itemised in the plaint, except for kshs 100, paid for police abstract, the remaining items had not been paid for at the date of the filing of the suit on August 19, 1983. As a result, it is impossible to ascertain the reasons which compelled the judge to award interest from the date of filing suit and this leads us to the inevitable conclusion that the learned judge wrongly exercised his discretion. This ground of appeal accordingly succeeds

Lastly, Justice J Kamau in the case of Heinz Broer v Buscar (K) Ltd & others [2019] eKLR held;

*"The basis of awarding interest on general damages from the date of judgment is premised on the ground that a plaintiff will not have been kept away from his monies because none would have been ascertainable at the time of institution of the suit. Interest on special damages would, however, accrue from date of filing suit as a plaintiff will have incurred expenses from the date suit is filed and he will have been kept away from his monies until judgment is delivered."*

From the aforementioned authorities, it is settled that special damages attract interest from the date of filing and only become due upon delivery of judgment.


Thus in the present case, the special damages of Kshs. 6,500,000.00/= ought to accrue interest from the date of filing the suit (28<sup>th</sup> April 1996) to the 2<sup>nd</sup> March 2017 subject to Section 4(4) of the Limitation of Actions Act. The special damages continued to accrue interest for a period of 6 years after delivery of judgment.

As per our advice dated 8<sup>th</sup> November 2019, we had calculated interest on special damages from 2<sup>nd</sup> March 2011 to 2<sup>nd</sup> March 2017. Therefore, the Plaintiff/Applicant is owed interest on special damages from 28<sup>th</sup> April 1996 to 2<sup>nd</sup> March 2011.

Accordingly, we advise settlement of the interest accrued on the special damages amounting to Kshs. 11,988,394.71/= as particularized therein below:

General Damages	Kshs. 1,000,000.00
Interest @12% WEF 02.03.2011 1,000,000*12/100*6	Kshs. 720,000.00
Special Damages	Kshs 6,500,000.00
Interest@12% WEF 28.04.1996 To 01.03.2011 6,500,000 *12/100*7,613/365	Kshs. 16,268,876.71
COSTS	Kshs. 351,518.00
<b>Total Decretal Amount</b>	<b>Kshs. 24,840,394.71</b>
<b>Less Amount Paid</b>	<b>(12,852,000.00)</b>
<b>Balance</b>	<b><u>Kshs. 11,988,394.71</u></b>

Kindly transfer the sum of Kshs 11,988,394.71/= being the outstanding decretal sum payable to the petitioner through Electronic Funds Transfer (EFT) to the credit of the State Law Office and Department of Justice for onward transmission to the Applicant's Counsel to compromise the pending warrant of Arrest issued on 23<sup>rd</sup> September 2023.

  
HON. SHADRACK J. MOSE  
SOLICITOR GENERAL

## OUR GUIDANCE

Section 26 of the Civil Procedure Act provides guidance on issue of interest. It provides;

*"(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.*

*(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum."*

In this case, the main contention is the interval of accrual of interest and whether the same is subject to Section 4(4) of the Limitation of Actions Act.

In the cases of *Lei Masaku vs Kalpama Builders Ltd* [2014] eKLR, *Oluoch Eric Goga vs Universal Corporation Ltd* [2015] eKLR, *Joseph Kiarie Njoroge vs Njue Kiarie* [2007] eKLR and *100 minor suing through father and next friend MOR vs Franciscan Sisters of the Immaculate* [2018] eKLR, *Mabeya, Aburili, Mumbi Ngugi JJ and Visram J* (as he then was) held and found that interest on general damages ought to run from the date of judgment while interest on special damages ought to run from date of filing suit.

In the case of *Francis Joseph Kamau Leatha vs Housing Finance Company of Kenya Ltd* [2015] eKLR, *Odunga J* held that interest therein would accrue from the date of filing of the suit to the date of judgment. He had due regard to the case of *Lwanga vs Centenary Rural Development Bank* [1999] 1 EA 175 where it was held that:-

*"The award of interest prior to the institution of the suit is rationalised in two ways: (1). that the plaintiff is thereby being compensated for being kept out of his money. He has been deprived of the use of his money from the time he incurred his loss. On that basis, interest is to run from that date. (2). that the defendant wrongfully withheld the plaintiff's money. The emphasis here is on the Defendant's wrongful withholding of the Plaintiff's money. On that basis, interest is to run from the date when the Defendant ought reasonably to have settled the plaintiff's claim. This is rather punitive."*

In *Shariff Salim & Another vs Malundu Kikava* [1989] eKLR, the Court of Appeal rendered itself as follows: -

*"There is no gainsaying the fact under Section 26 of the Civil Procedure Act, the award of interest on a decree for the payment of money for the period from the date of the suit to the date of the decree is a matter entirely within the discretion of the court. But this discretion being a judicial one must be exercised judicially. The whole idea at the end of the day is to do justice to both parties. In the case of *Prema Lata vs Peter Musa Mbiyu* [1965] EA 592, the appellant, in a suit for damages for personal injuries, was awarded Kshs 24,000, as general damages and Kshs 1,742.80 as special damages but the judge refused an application to award interest on these two sums from the date of filing suit until judgment. On appeal, the Court of Appeal for East Africa held that in personal injury cases, interest on general damages should not be awarded for the period between the date of filing suit and judgment but that interest should normally be awarded on special damages if the amount claimed has been actually expended or incurred at the date of filing the suit. The judge gave no reason for ordering that interest even on general damages was to be paid from the date of filing the suit. According to the authorities interest on general damages should be paid from the date of assessment which of course is the date of judgment.*

*That is the earliest date when the defendant's liability to pay does arise. That order even in*



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Our Ref: AG/DOD/26/96 & AG/JRP/DOD/239/12  
Your Ref: MOD 11/311A

13<sup>th</sup> December 2023

Hon. Patrick Mariru, CBS  
Principal Secretary  
Ministry of Defence  
Ulinzi House, Lenana Road  
P.O. Box 40668-00100,  
**NAIROBI**

RE: NAIROBI HCCC NO.1051 OF 1996  
ISAIAH O. OCHANDA VS THE HON. ATTORNEY GENERAL

Reference is made to the above matter, our letter dated 8<sup>th</sup> November 2019, and your letter dated 11<sup>th</sup> October 2023.

**BACKGROUND**

The plaintiff herein filed this suit claiming damages for breach of duty of care. The plaintiff was an employee of the Kenya Army attached to 75 Artillery Air Defence Unit. In 1978, he was involved in the All African Games as a wrestling coach. He got injured during training and became paraplegic.

The matter went to full trial and a judgment was delivered on 2<sup>nd</sup> March 2011 in favour of the plaintiff in the following terms:

- a) *The defendant to pay the plaintiff the balance of pension due and payable to him.*
- b) *The defendant to pay the plaintiff the balance of medical expenses as at 1996 on production of receipts.*
- c) *The defendant to pay the plaintiff general damages in respect of pain, suffering and loss of amenities in the sum of Kshs. 1,000,000.*
- d) *The defendant to pay the plaintiff special damages in the sum of Kshs. 6,500,000 in respect of future medical expenses.*
- e) *The defendant to pay the plaintiff costs and interests as per the law.*

The Ministry now seeks our guidance on the accrual of interest on the special damages as awarded by Court on 2<sup>nd</sup> March 2011.

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: [info.state.law@kenya.go.ke](mailto:info.state.law@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)



16-Apr-23 11:36:38AM

# MINISTRY OF DEFENCE

## RECURRENT A/C

### PAYMENTS SCHEDULE

Printed By: PAMELA MAKENA

Transaction Checklist Dated: 16-Sep-2021

KEPSS No..... Cash Book Date:.....

Posting Ref	Amount	Credit Bank	Beneficiary Act	Beneficiary Name	Originators Ref	Debit Account	Mode	Remitter	Type
Central Bank of Kenya 597	399,518.00	09000	1000303425	ATTORNEY GENERAL DEPARTMENT OF JUST	00402	1000181435	TRFS	MINISTRY OF DEFENCE 59	
	<u>399,518.00</u>								
	<u>399,518.00</u>			Total No of Records	1				

Entered by:

Date:

F2122-(E1492021)-30118

Checked by:

Date:

Batch No:

Approved By:

Date:

2469

26/04/2021 15:58:24

### MINISTRY OF DEFENCE

## RECURRENT A/C

### PAYMENTS SCHEDULE

Printed By: CHEBII ZAKAYO

Transaction Checklist Dated: 22-Apr-2021

KEPSS No..... Cash Book Date:.....

Processing Ref	Amount	Credit Bank	Beneficiary Act	Beneficiary Name	Originators Ref	Debit Account	Mode	Remitter
030574	4,000,000.00	09001	1000303425	(OFFICE OF THE ATTORNEY GENERAL) SOL	34782	1000181435	TRFS	MINISTRY OF DEFENCE
	<u>4,000,000.00</u>							
	<u>4,000,000.00</u>			Total No of Records	1			

Data Entered by: \_\_\_\_\_ Date: \_\_\_\_\_

Verified by: \_\_\_\_\_ Date: \_\_\_\_\_

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

Batch No:  
79014

27/04/2021 11:52:54

# MINISTRY OF DEFENCE

## RECURRENT A/C

### PAYMENTS SCHEDULE

Printed By: CHEBII ZAKAYO

Transaction Checklist Dated:01-Mar-2021

KEPSS No.....Cash Book Date:.....

Processing Ref	Amount	Credit Bank	Beneficiary Act	Beneficiary Name	Originators Ref	Debit Account	Mode	Remitter
023551	4,000,000.00	09001	1000303425	(OFFICE OF THE ATTORNEY GENERAL)SOL	27664	1000181435	TRFS	MINISTRY OF DEFENCE
	<u>4,000,000.00</u>							
	<u>4,000,000.00</u>		Total No of Records	1				

Data Entered by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Verified by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

Batch No:  
77230

2020 3:46:23PM

# MINISTRY OF DEFENCE

## RECURRENT A/C

### PAYMENTS SCHEDULE

Printed By: MARGARET MUNYAKA

Transaction Checklist Dated: 04-Jun-2020

KEPSS No.....Cash Book Date:.....

Issuing Ref	Amount	Credit Bank	Beneficiary Act	Beneficiary Name	Originators Ref	Debit Account	Mode	Remitter	Type
Central Bank of Kenya 03	4,852,000.00	09001	1000303425	(OFFICE OF THE ATTORNEY GENERAL)SOL	41741	1000181435	TRFS	MINISTRY OF DEFENCE	59
	<del>4,852,000.00</del>								
	<u>4,852,000.00</u>			Total No of Records	1				

Entered by: \_\_\_\_\_ Date: \_\_\_\_\_

Batch No:

Checked by: \_\_\_\_\_ Date: \_\_\_\_\_

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

Service Gratuity of **Kshs. 79,375/=**. This was documented as per the attached copy of Forces Form GPK6103 **Flagged "H"**.

10. However, out of humanitarian concerns owing to the gravity of the permanent injury, the **Pensions Assessment Board** granted him a **Pension** in lieu of the Gratuity in accordance with rule 35(4) of the then-applicable Armed Forces (Pensions and Gratuities) (Officers and Servicemen) Regulations, 1980. A fresh pension assessment was done in which he was awarded a lump sum of **Kshs. 59,531.25** and a monthly pension of **Kshs. 992.00**. The amount previously paid as gratuity was recovered from the pension lump sum and 19 monthly pension payments. This is evidenced by the attached copy of Forces Form 129 **Flagged "I"**.
11. He was also awarded a disability pension of **Kshs. 727.50** per month at the rate of 50% of monthly pay as at the date of injury flagged "**J**".
12. Once the computation and assessment of pension is completed at the ministry, the same is transmitted to the director of pensions for settlement.



**HON. ADEN BARE DUALE, EGH**  
**CABINET SECRETARY**

4. In this regard, AG's opinion on the settlement was sought. The Ministry was advised that pursuant to section 4(4) of the Limitation of Actions Act, interest on actions arising from tort or contract are not payable **six (6)** years after they become due. The AG computed interests from the date of judgment, **2<sup>nd</sup> March, 2011**, until the lapse of six years on **2<sup>nd</sup> March, 2017**, to the tune of **Kshs. 13,251,518.00** and advised MOD to pay. Owing to the limited allocation in the Legal Dues vote, the Ministry settled the amount as advised by the AG in four (4) instalments by **16<sup>th</sup> September, 2021** as follows:

a.	RTGS dated 04 Jun 20	<b>Kshs. 4,852,000.00</b>
b.	RTGS dated 01 Mar 21	<b>Kshs. 4,000,000.00</b>
c.	RTGS dated 22 Apr 21	<b>Kshs. 4,000,000.00</b>
d.	RTGS dated 16 Sep 21	<b>Kshs. 399,518.00</b>

These payments are evidenced by attached copies of RTGS of dates as stated above flagged "**A**" "**B**" "**C**" and "**D**"

5. However, the Ex-Service Member maintained the claim for full payment as decreed by the court. He proceeded to file a Supplementary Affidavit maintaining that the decree still exists and it is not up to MOD to decide the extent to which it will satisfy the decree of court. The AG has subsequently advised the Ministry to settle the decree in full based on accrued interests on special damages from the time of filing suit on **28<sup>th</sup> April, 1996** until **2<sup>nd</sup> March, 2011**, when the first disbursement was first calculated. The revised computation was based on judicial precedent upholding that interest on special damages accrues from filing suit (not the date of judgment) until 6 years after the judgment as shown on Flag "**E**".
6. In light of the AG's guidance, the Ministry has sought authorization from the AG to settle to the balance amounting to **Kshs.11,588,876.71/=** vide letter MOD/11/31A dated **28<sup>th</sup> February, 2024** (Copy attached) flagged "**F**".
7. MOD aims to expeditiously settle the outstanding decree amount upon receipt of the requisite approvals from both the AG and National Treasury.

## **Q2. Payment of Group Personal Accident Cover, Service Gratuity and Disability Pension**

8. When the Service Member suffered the injury, a claim was pursued under the Group Personal Accident cover and he was paid **Kshs. 73,000/-** on 6<sup>th</sup> June, 1990. This was documented in the copy of the attached letter flagged "**G**"
9. To be eligible for Pension, it is prescribed that one must have served for **12 years**. Therefore, premised on his period in Service - **10 years 153 days**, he was paid a



## MINISTRY OF DEFENCE

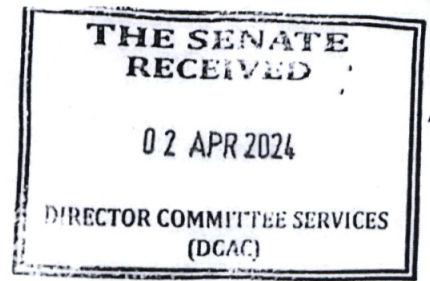
### SUBMISSION TO THE STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE & FOREIGN RELATIONS OF THE SENATE ON A PETITION FOR NON-FULFILLMENT OF A COURT ORDER AND A DECREE MADE IN 2011 AGAINST THE MINISTRY OF DEFENCE AND THE ATTORNEY GENERAL AND THE NON-PAYMENT OF DISABILITY PENSION

#### INTRODUCTION

1. The matter in question relates to a suit – **NAIROBI HCC NO. 1051 OF 1996 ISIAH O OCHANDA VS THE ATTORNEY GENERAL** filed by the petitioner.
2. The petitioner was an employee of the Kenya Army attached to 75 Artillery Air Defence Unit. The petitioner was discharged from Service on **13<sup>th</sup> April, 1995** on medical grounds after sustaining injuries during the All Africa Games **1987**, where he participated as a Judo Trainer. The matter went to full trial and judgement was delivered on **2<sup>nd</sup> March, 2011** in favour of the petitioner on the following terms:
  - a. The defendant to pay the plaintiff the balance of pension due and payable to him;
  - b. The defendant is to pay the plaintiff the balance of medical expenses as of **1996** on the production of receipts;
  - c. The defendant to pay the plaintiff general damages in respect of pain, suffering and loss of amenities in the sum of **Kshs. 1,000,000**;
  - d. The defendant to pay the plaintiff special damages in the sum of **Kshs. 6,500,000** in respect of future medical expenses; and
  - e. The defendant to pay the plaintiff costs and interests.

#### **Q1 Non-fulfilment of a Court Order and Decree**

3. On **14<sup>th</sup> November, 2011**, the High Court issued a Certificate of Order against the Government for the total sum of **Kshs. 22,916,824.34**. MOD made several attempts to pursue out of court settlement at **Kshs. 12,000,000.00** which the claimant declined.

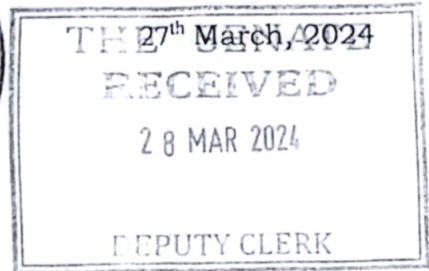


# MINISTRY OF DEFENCE

Telegrams: "DEFENCE", Nairobi  
Telephone Nairobi 2721100  
Fax No: 254 - 2 -725854  
Email: ps@mod.go.ke

Defence Headquarters  
Ulinzi House  
P. O. Box 40668  
NAIROBI, KENYA

When replying please quote: MOD 17



**Clerk of the Senate**  
Parliament Buildings  
**NAIROBI.**

## INVITATION TO A MEETING OF THE STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND FOREIGN RELATIONS

Please refer to your letter Ref. No. SEN/DGA/NSDFR/CORR/C/2024/5(2) dated 21<sup>st</sup> February, 2024 on the above subject matter.

Forwarded, please find a response to the Standing Committee on National Security, Defence and Foreign Relations of the Senate on a Petition for Non-Fulfillment of a Court Order and Decree made in 2011 against the Ministry of Defence and the Attorney General and the Non Payment of Disability Pension.

**B.O. ODEGI**  
**FOR: PRINCIPAL SECRETARY**

D DGAC

Kindly deal.

Ep  
28/03/2024

② Head-Governance  
Lead Clerk - NSDFR

Kindly Deal

22/04/2024

The gratuity to be paid to this Officer/Serviceman is Sh. 79375.00

AMOUNT IN WORDS: Shillings Seventy nine thousand three hundred seventy five only.

Date 19 1975

[Signature]  
(Signature of Officer of Armed Forces Pay Office)

**PART IV (for completion by Record Office)**

Ref. DOD/NE/56411

OIC Accounts Division,  
Military Pensions Office,  
The Treasury, P.O. Box 30007, Nairobi.

Herewith (in triplicate) details of gratuity to be awarded to Officer/Serviceman described in Part I.  
Recover Government Liability amounting to Ksh. NIL

Will you please complete Part V below and return one copy of this form to me for record purposes.

Date 29 April, 1975

[Signature]  
(OIC Armed Forces Record Office)

**PART V (for completion by Military Pensions Office)**

Ref.: \_\_\_\_\_

Armed Forces Pay and Records Office,  
P.O. Box 4024, Nairobi.

A payment of Sh. \_\_\_\_\_ has been made to this Officer/Serviceman  
Cheque No. \_\_\_\_\_ dated \_\_\_\_\_

Date \_\_\_\_\_, 19\_\_\_\_

(Military Pensions Office)

This form will be completed for an Officer/Serviceman who on discharge is ineligible for a pension but who (a) has completed at least 3 years Short Service Commission, 7 years (Regular Commission) or 12 years (Serviceman) reckonable service and is to be discharged for reason other than misconduct or inefficiency within his own control or (b) is invalided, is discharged on reduction of establishment or for any reason his services are no longer required.

**— SERVICE GRATUITY — OFFICERS/OTHER RANKS**

11

See over for conditions.

A3

**PART I (for completion by Record Office in quintuplicate)**

**1. Particulars of Officer/Serviceman**

Number 56411 Rank GNR 31  
 Name ISAIAH ODUOR OCHANDA  
 Tribe LUO Chief CYPRIANO NJOBANDO  
 District SOUTH NYANZA Sub-~~CAO~~ LOC. KAWERE  
 Location KANYAMKAGO Headman -  
 Village URIRI Registration No. 6369024-6369213/69  
 Bank KENYA COMMERCIAL BANK Present Address DISTRICT COMMISSIONER  
SARE-AWENDO BRANCH SOUTH NYANZA DISTRICT  
P.O. BOX 54 MIGORI P.O. BOX 1 HOMABAY  
A/C NO. 12104 1530

**2. Details of discharge**

Cause MEDICAL GROUNDS Date 13 - 4 - 95  
AF(PENSIONS AND GRATUITIES) REGS  
PARA 35 (4)

**3. Details of reckonable service**

- (a) on current engagement 12-11-84 TO 13-4-95
- (b) on previous engagement for which no gratuity has been paid or, if paid, has been refunded.....
- (c) TOTAL service to reckon for gratuity.....

Years	Days
10	153
10	153

Certified correct.

Date 15<sup>th</sup> May, 19 95

*[Signature]*  
 (Signature of Record Officer appointed by  
 OIC Armed Forces Record Office)

**PART II (for completion by Record Office)**

OIC Armed Forces Pay and Accounts Office, (4 copies)

- The above-mentioned Officer/Serviceman is entitled to a service gratuity.
- Please calculate the gratuity to be paid and enter the amount in part III over.
- Three copies of this form should be returned to me and one copy retained.

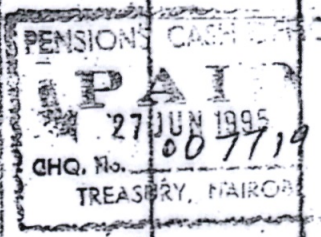
Date 16 May, 19 95

*[Signature]*  
 (OIC Armed Forces Record Office)

**(VOTED PROVISION)**  
**ISAIAH ODOR OCHANDA ID/NO: 6369024-6369213/69 THRD' The 1**

Payee's Name and Address

Particulars	LPO/LSO No.	Invoice No.	AMOUNT	
			Sh.	Cts.
Being payment of Disability pension for the period 13-4-95 to 30-6-95 due to the above named @Kshs, 727-50 p.m. (2182-50 quarterly)				
			1891	50
			1891	50



Amount payable (in words) **One thousand eight hundred ninety one.** TOTAL Sh. **Fifty.**  
 Shs in **Fifty.**

Authority Reference No. **DPN/P 15303**

Voucher Examined by **EXAMINATION**  
 Date **23/6/95**

Internal Audit  
 Signature  
 Designation of AIE Holder

VBC CERTIFICATE  
 I certify that the expenditure has been incurred and that adequate funds to cover it are available against the appropriate items as shown here below:

AIE HOLDER CERTIFICATE  
 I certify that the expenditure detailed above has been incurred for the authorized purpose and should be charged to the item shown here below:

Approved Estimates Allocation—  
 Item No. **KSh**  
 Less: Total expenditure plus commitments **KSh**  
 Balance— **KSh**  
 Less: This ENTRY—Vch. **KSh**  
 No **KSh**  
 Balance **KSh**

AUTHORIZATION  
 I certify that the rate/price charged is/are according to regulation/contract, fair and reasonable, that the expenditure has been incurred on proper authority and should be charged as under. Where appropriate a certificate overleaf has been completed. I hereby AUTHORIZE payment of the amount shown above without any alteration.  
 Signature  
 Accounting Officer/District Accountant

Date **26/6/95**  
 Signature **Accountant i/c VBC**

Vote	Head	Sub-Head	Item
<b>CFS</b>	<b>Military Pension</b>		<b>Kenya War Pensions</b>

A.I.E. No.	Account No.	Dept. Vch. No.	Station	CASH BOOK		AMOUNT	
				Voucher No.	Date	Sh.	Cts.
	<b>0-956-100-023-3</b>					1891	50

**INTER OFFICE MEMO**

TO: DHQ Legal

FROM: SOI Recs

EXTN: 5812

DATE: 04 May 16

REF: DHQ/NE/56411

SUBJECT: **TERMINAL/DISABILITY PENSION**  
**56411 EX – BDR ISAIAH ODUOR OCHANDA**

Ref: Your IOM MOD/383/293/LEGAL dated 29 Apr 16.

1. The above named Ex – Service member who was discharged from the service on medical grounds on 13 April 1995 after serving for 10 years 153 days was paid gratuity of Kshs 79,375.00 (Seventy Nine Thousand Three Hundred Seventy Five Only) and he is on quarterly payment for disability pension of Kshs 1,891.50 (One Thousand Eight Hundred Ninety One Cents Fifty). The Ex – Service Member also gets reimbursement from pension department for any medical expenses he incurs in line with his disability.
2. Attached herewith please find his personal file, FF 15A and copies of FO 20 (Revised) forwarded for your perusal.
3. Please acknowledge receipt.

  
**J K KOSEN**  
Lt Col  
SO1 Recs

APPROVED DEATH GRATUITY AND DEPENDANT'S MONTHLY RATE OF PENSION

- i. Death Gratuity :- Kshs. .... Cts. ....
- ii. Dependant's monthly rate of pension Kshs. .... Cts. ....
  - a. Prepared by No. 55845 Rank. Sgt. Name. Mungani  
Date. 10-8-95 Signature. [Signature]
  - b. Checked by No. 5557 Rank. W/O Name. NALUNGU  
Date. 10-8-95 Signature. [Signature]
  - c. OTC Pension/Gratuity Section. ....  
Date. 15-8-95 Signature. [Signature]
  - d. SO IT CAD/SAD. ....  
Date. 15-8-95 Signature. [Signature]
  - e. SO I CAD/SAD. ....  
Date. 16-8-95 Signature. [Signature]

FAA

**B. FOR COMPLETION BY OTC PAY AND ACCOUNTS**

146

No. 5644 RANK. ABDR NAME I. SAHAB ADJUTANT GENERAL

- i. Monthly basic pay plus allowances..... 5080.00
- ii. Date of discharge/death notified by OTC Records... 1.3.4.82
- iii. Date promoted to present rank..... 1.1.16.80
- iv. Number of months completed reckonable service..... 125.1

**6. Assessment Of Pension**

- i. Monthly pay plus allowances Kshs. 5080.00 x 125.1.....
- ii. Divide by 480/500 Kshs... 1322.916 rate of pension
- iii. Annual pension = Rate of pension x 12 = Kshs... 15874.98927
- iv. Percentage of pension commuted 25%/50% = Kshs... 3968.74781
- v. Amount of commutation para 6(iv) x 15 = Kshs... 59531.21701
- vi. Reduced Annual pension para 6(iii) - 6(v) = Kshs... 11916.77226
- vii. Reduced monthly pension para 6(vii) ÷ 12 = Kshs... 992.89741

**7. Assessment of Gratuity if not eligible for pension**

- i. Annual Rate of Pension para (iii) = Kshs.....
- ii. Rate of Gratuity para 7 (i) x 5 (Times) = Kshs.....

**8. Assessment of Death Gratuity payable Under Regulation 13 (1) of The Armed Forces (Pension And Gratuity) (Officers And Servicemen Regulation 1900) Where an officer or Serviceman/Woman Dies while Still Serving in The Forces**

Death Gratuity is an amount not exceeding :-

- a. Twice his/her annual pensionable emoluments  
para 5 (i) x 24 = Kshs..... x 24 Kshs.....
- b. Or commuted pension para 6(v) ..... Kshs.....
- c. Or Gratuity para 7 (ii) ..... Kshs.....
- which is greater ..... Kshs.....
- d. Para 8(c) is not applicable when an officer/serviceman/woman is eligible for pension.

**9. DEPENDANT'S PENSION WHERE AN OFFICER/SERVICEMAN/WOMAN DIES WHILE STILL SERVING IN THE ARMED FORCES PAYABLE UNDER REGULATION 12 (J) L.N. No 77 OF 26TH APRIL 1985 OF THE ARMED FORCES PENSIONS AND GRATUITIES OFFICERS AND SERVICEMEN REGULATIONS 1980**

**MONTHLY RATE OF PENSION:**

Annual pension para 6 (III) ÷ 12 = Kshs..... Cts

**PART III (for completion by Armed Forces Pay Office)**

The rate of pension to be awarded to this Officer/Serviceman/Servicewoman is:—

(a) Full pension Sh. \_\_\_\_\_ per month  
OR (b) Reduced pension Sh. 992.20 per month  
and Sh. 59531.25 Commutation.

AMOUNT IN WORDS: Shillings Nine hundred ninety two  
Cents twenty only Reduced Pension and Shillings Fifty nine  
thousand five hundred thirty one and cents  
twenty five only Commutation.

Date 15/8 1995  
*[Signature]*  
(Signature of authorized officer  
Armed Forces Pay Office)

**PART IV (for completion by Record Office)**

OIC Accounts Division,  
Military Pensions Office,  
The Treasury, P.O. Box 30007, Nairobi.

Ref.: DOD/MS/58411

Herewith (in triplicate) details of pension to be paid to the  
Officer/Serviceman/Servicewoman described in Part I.

Will you please complete Part V below and return one copy  
of this form to me for record purposes. NR

Date 31 August 1995 *[Signature]*  
(OIC Armed Forces Record Office)

**PART V (for completion by Military Pensions Office)**

Armed Forces Pay and Records Office,  
P.O. Box 44024, Nairobi.

Ref.: \_\_\_\_\_

The sum of Sh. \_\_\_\_\_ has been made to this Officer/Serviceman/Servicewoman  
Cheque No. \_\_\_\_\_ dated \_\_\_\_\_

Date \_\_\_\_\_, 19\_\_\_\_  
(Military Pensions Office)

This form will be completed for an Officer/Serviceman/Servicewoman (1) who is discharged otherwise than for misconduct or for subversive activities or inefficiency within his own control, if he has completed at least 10-18 years reckonable service or (2) for a serviceman who is invalided or discharged under subsecs. (d), (e) or (g) of sec. 176 of the Armed Forces Act after he has undertaken to serve for 18 years, provided he has completed at least 12 years service; or an officer who is retired from regular forces on reduction of establishment or if for any reason his services are not longer required after having completed at least 7 years reckonable service.

(41)

**ASSESSMENT OF PENSION—OFFICERS/OTHER RANKS**

See over for conditions.

**PART I (for completion by Record Office in quintuplicate)**

1. Particulars of Officer/ Serviceman/ Servicewoman  
 Number **50411** Rank **A/SGT**  
 Name **ISATAH ODUOR OCHANDA**  
 Tribe **LUO** Chief **CYPRIANO NJORANDO**  
 District **SOUTH NYANZA** Sub-Location **KAWERE**  
 Location **KANYAMKAGO** Headman .....  
 Village **URIRI** Registration No. **6369024-6369213/69**  
 Bank **KENYA COMMERCIAL BANK** Present Address **DISTRICT COMMISSIONER**  
**SARE - AWENDO BRANCH** **SOUTH NYANZA DISTRICT**  
**P O BOX 54 MIGORI** **P O BOX 1 HOMABAY**  
**A/G NO 12104 1530**

2. Details of discharge

Cause **MEDICAL GROUNDS** Date **13-4-95**  
**(PENSIONS AND GRATUITIES) RUGS**  
**PARA 35 (4)**

3. Details of service **12-11-84 TO 13-4-95**

- (a) Reckonable service on current engagement
- (b) Reckonable service on previous engagements for which no gratuity has been paid or, if paid, has been refunded
- (c) Total service to reckon for pension

Years	Days
10	153
10	153

Certified correct.

Date **19<sup>th</sup> June 1995**  
 (Signature of Record Officer appointed by OIC Armed Forces Record Office)

**Part II (for completion by Record Office)**

O. i/c Armed Forces Pay and Accounts

(Officers/Other Ranks Accounts 4 copies)

- 1. The above-mentioned Officer/ Soldier is entitled to a service pension.
- 2. Please calculate the rate of pension to be awarded and enter the rate in Part III over.
- 3. Three copies of this form should be returned to me and one copy retained.

Date **20<sup>th</sup> June 1995**  
 (OIC Armed Forces Record Office)

The gratuity to be paid to this Officer/Serviceman is Sh. 79375.00

AMOUNT IN WORDS: Shillings Seventy nine thousand three hundred seventy five only.

Date 19, 1975

[Signature]  
(Signature of Officer of Armed Forces Pay Office)

**PART IV (for completion by Record Office)**

Ref.: DOD/NE/56411

OIC Accounts Division,  
Military Pensions Office,  
The Treasury, P.O. Box 30007, Nairobi.

Herewith (in triplicate) details of gratuity to be awarded to Officer/Serviceman described in Part I.  
Recover Government Liability amounting to Ksh. NIL

Will you please complete Part V below and return one copy of this form to me for record purposes.

Date 29, 1975

[Signature]  
(OIC Armed Forces Record Office)

**PART V (for completion by Military Pensions Office)**

Ref.: .....

Armed Forces Pay and Records Office,  
P.O. Box 4024, Nairobi.

A payment of Sh. .... has been made to this Officer/Serviceman  
Cheque No. .... dated .....

Date ....., 19.....

(Military Pensions Office)

This form will be completed for an Officer/Serviceman who on discharge is ineligible for a pension but who (a) has completed at least 3 years Short Service Commission, 7 years (Regular Commission) or 12 years (Serviceman) reckonable service and is to be discharged for reason other than misconduct or inefficiency within his own control or (b) is invalided, is discharged on reduction of establishment or for any reason his services are no longer required.

**— SERVICE GRATUITY — OFFICERS/OTHER RANKS**

11

See over for conditions.

A3

**PART I (for completion by Record Office in quintuplicate)**

**1. Particulars of Officer/Serviceman**

Number 56411 Rank GNR 31  
 Name ISAIAH ODUOR OCHANDA  
 Tribe LUO Chief CYPRIANO NJOBANDO  
 District SOUTH NYANZA Sub-~~CAR~~ LOC. KAWERE  
 Location KANYAMKAGO Headman -  
 Village URIRI Registration No. 6369024-6369213/69  
 Bank KENYA COMMERCIAL BANK Present Address DISTRICT COMMISSIONER  
SARE-AWENDO BRANCH SOUTH NYANZA DISTRICT  
P.O. BOX 54 MIGORI P.O. BOX 1 HOMABAY  
A/C NO. 12104 1530

**2. Details of discharge**

Cause MEDICAL GROUNDS Date 13 - 4 - 95  
AF(PENSIONS AND GRATUITIES) REGS  
PARA-35 (4)

**3. Details of reckonable service**

- (a) on current engagement 12-11-84 TO 13-4-95
- (b) on previous engagement for which no gratuity has been paid or, if paid, has been refunded.....
- (c) TOTAL service to reckon for gratuity.....

Years	Days
10	153
10	153

Certified correct.

Date 15 May, 1995

*[Signature]*  
 (Signature of Record Officer appointed by  
 OIC Armed Forces Record Office)

**PART II (for completion by Record Office)**

OIC Armed Forces Pay and Accounts Office, (4 copies)

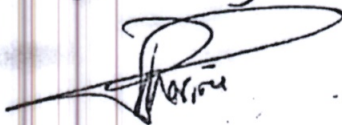
- The above-mentioned Officer/Serviceman is entitled to a service gratuity.
- Please calculate the gratuity to be paid and enter the amount in part III over.
- Three copies of this form should be returned to me and one copy retained.

Date 16 May, 1995

*[Signature]*  
 (OIC Armed Forces Record Office)

In view of the above, kindly review the outstanding decretal sum payable to the Claimant and issue authority to settle the matter at Kshs. 11,588,876.71.

Yours

*Sincerely*  


Patrick Mariru, CBS  
PRINCIPAL SECRETARY

16

DOD/HE/496


27<sup>th</sup> June, 90

The Garrison Commander  
Entebbe Garrison

GROUP PERSONAL ACCIDENT PAYMENT

56411	CHR	ISAIAH ODUOR OGHANDA	Kshs. 73,000.00 ✓
53520	FTE	ROBERT RUKOCH CHIRCHIR	" 13,320.00
			Total <u>86,320.00</u>

1. Attached herewith please find cheque No. 796193 dated 6th June 1990 for Kshs. 86,320/- being Group Personal Accident Compensation in respect of the above named servicemen who were injured.
2. Certificates of Group Personal Accident payment are also attached herewith for them to sign on the provided spaces and subsequently return the same to this office for record purposes.

  
 M. F. NGELICHY  
 Major  
for Chief of General Staff

Copy to: D/Chief of Pers(Pay) - Your letter DOD/GPA/SCF/1 dated 13th June, 1990 refers.

# **ANNEX 5**

Submissions by the Attorney General



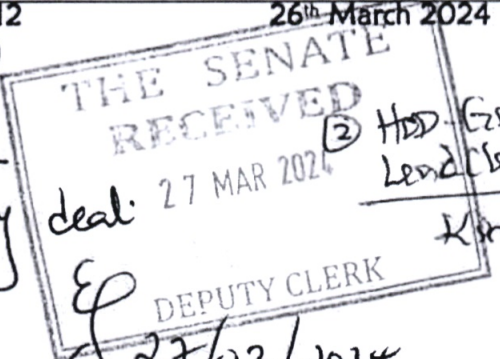
Our Ref: AG/DOD/26/96 & AG/JRP/DOD/239/12  
Your Ref: SEN/DGA/NSDFR/CORR/C/2024/5(2)

26<sup>th</sup> March 2024

Mr. J.M. Nyegenye, CBS  
Clerk of the Senate  
Clerk's Chambers  
Parliament Buildings  
**NAIROBI**

① DGAC

Kindly deal



② HOD - GOVERNANCE & LEAD CLERK - NSDFR

Kindly deal  
27/03

Ep  
27/03/2024

**RE: INVITATION TO A MEETING OF THE STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND FOREIGN RELATIONS.**

We write with reference to your letter referenced SEN/DGA/NSDFR/CORR/C/2024/5(2) dated the 12<sup>th</sup> March 2024 which seeks our written submissions concerning a Petition presented to the Standing Committee on National Security, Defence and Foreign Relations pertaining alleged non-fulfilment of a Court Order and Decree against the Ministry of Defence and the Attorney-General.

We note that on the 14<sup>th</sup> February 2024, the Plaintiff, Isaiah Oduor Ochanda presented a Petition to the Committee seeking that the Senate compels the Ministry of Defence to settle the decretal amount awarded by the Court.

The Petitioner also seeks that the Senate helps him get disability pension outstanding from 1996 to date.

**Brief Facts.**

1. The Petitioner herein is paraplegic. In 1984, he was employed by the Kenya Army as a soldier attached to the 75 Artillery Battalion. In 1987, he was granted permission to train the Kenya Wrestling Team which was to participate in the All-African Games in Nairobi.
2. On the 20<sup>th</sup> May 1987, while training the said team, he fell down and sustained severe neck injuries. He was rushed to the Forces Memorial Hospital, Nairobi for treatment. It transpired that he had a dislocation in his spinal cord. He was to remain in the said hospital for 2 years. He was also taken to the Spinal Injury Hospital, Nairobi for further medical attention. He never recovered. He lost the ability to use his lower limbs.

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: [info.statelawoffice@kenya.go.ke](mailto:info.statelawoffice@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

ISO 9001:2008 Certified



3. It was the Petitioner's contention that an expert at the said Spinal Injury Hospital, Prof. Atinga recommended that he should be taken for specialized treatment in the United Kingdom. He asserted that the failure by the Department of Defence (DOD) to act as per Professor Atinga's recommendation was a breach of the duty of care owed to him by the Department of Defence (DOD).
4. In light of the foregoing, the Petitioner sued DOD claiming damages for breach of duty of care, medical expenses, discharge and Medical Assessment Board benefits. We filed a Statement of Defence dated the 7<sup>th</sup> October 1997 denying liability.
5. The suit was heard and Justice K. Rawal delivered her judgment on the 2<sup>nd</sup> March 2013 in favour of the Petitioner, finding that although DOD was not negligent, it had breached the duty of care it owed to the Petitioner. The learned Judge therefore entered judgment in his favour whereby DOD was ordered to-
  - a) Pay the Plaintiff his pension dues.
  - b) Pay the Plaintiff the balance of medical expenses as at 1996 on production of receipts.
  - c) Pay the Plaintiff general damages in respect of pain, suffering and loss of amenities being Kshs. 1,000,000.00
  - d) Pay the Plaintiff special damages in the sum of Kshs. 6,500,000.00 being future medical expenses.
  - e) Pay the Plaintiff costs of the suit plus interests. (*Annexed hereto please find a copy of the judgment dated 2<sup>nd</sup> March 2011 marked as Annexure 1*).
6. Aggrieved by the said judgment, DOD instructed us to appeal which we did vide NAIROBI C.A. 330 of 2017.
7. The appeal has not been set down for hearing.
8. In an effort to enforce the said judgment, the Petitioner, vide NAIROBI HC.JR. 229 of 2013, applied for an order of mandamus to compel the payment of the decretal sum. It was granted on the 21<sup>st</sup> November 2012 by Justice W.K. Korir.
9. On the 8<sup>th</sup> December 2014 the Petitioner wrote to the Attorney-General seeking his assistance to have the decretal sum paid. The Attorney-General vide his letter dated the 10<sup>th</sup> December 2014 informed DOD of this development (*Annexed hereto please find copies of the letters dated 8/12/2014 & 10/12/2014 marked as Annexure 2(a) & (b)*).
10. On the 4<sup>th</sup> February 2015 DOD instructed us to pursue an out of Court settlement. On the 30<sup>th</sup> April 2015, a meeting was held between our Office,

the Petitioner and his advocate and a representative of DOD. After discussions, DOD offered to settle the decretal sum at Kshs. 12,000,000/= and the same was communicated with the Petitioner. *(Annexed hereto please find copies of the letters dated 4<sup>th</sup> February 2015, 6<sup>th</sup> May 2015 & 12<sup>th</sup> May 2015 marked as Annexure 3(a), (b) & (c))*

11. On 25<sup>th</sup> May 2015, the Plaintiff wrote to us rejecting the offer and gave a sum of Kshs. 21,916,828.34/= which DOD rejected thereby collapsing the negotiations. *(Annexed hereto please find a copy of the letter dated 25<sup>th</sup> May 2015 marked as Annexure 4)*

12. As per our mandate vide a letter dated the 8<sup>th</sup> November 2019 we advised DOD to settle the claim in the sum of Kshs. 13,251,518.00/= computed for six years as per Section 4(4) of the Limitation of Actions Act as indicated hereinunder:

General Damages	1,000,000.00
Interest on general damages....1, 000,000*12/100*6	720,000.00
Special damages	6,500,000.00
Interest on special damages...6,500,000*12/100*6	4,680,000.00
Taxed costs	351,518.00
<b>TOTAL</b>	<b>13,251,518.00</b>

*(Annexed hereto please find a copy of our letter dated the 8<sup>th</sup> November 2019 and marked as Annexure 5)*

13. We confirm that so far DOD has remitted Kshs. 12,852,000/= vide two instalments being Kshs. 4,852,000/= remitted vide RTGS dated 4<sup>th</sup> June 2020 and Kshs. 8,000,000/= remitted vide RTGS dated 1<sup>st</sup> March 2021.

14. The sum of Kshs. 12,852,000/= was forwarded to the Plaintiff on the 24<sup>th</sup> March 2022. *(Annexed hereto please find a copy of the payment voucher marked as Annexure 6)*

#### **Current Status and Way Forward**

15. Vide a letter dated the 11<sup>th</sup> October 2023 DOD sought our guidance on the accrual of interest on the special damages as awarded by the Court on 2<sup>nd</sup> March 2011. *(Annexed hereto please find a copy of the letter dated the 11<sup>th</sup> October 2023 marked as Annexure 7)*

16. On 13<sup>th</sup> December 2023, we advised DOD that the interest in the award of special damages (Kshs. 6,500,000/=) ought to have been from the date of filing suit i.e. (28<sup>th</sup> April 1996 to 2<sup>nd</sup> March 2017) subject to Section 4(4) of the Limitation of Actions Act and as such the Plaintiff was still owed interest in special damages from 28<sup>th</sup> April 1996 up to 2<sup>nd</sup> March 2011 being the date the calculations as per the letter of 8<sup>th</sup> November 2019 stated.


17. The amounts payable inclusive of interest on the special damages was Kshs. 11,988,394.71/= as particularized herein under:

• General Damages	Kshs. 1,000,000.00
• Interest @12%WEF 02.03.2011 1,000,000*12/100*6	Kshs. 720,000.00
• Special Damages	Kshs 6,500,000.00
• Interest@12%WEF 28.04.1996 To 01.03.2011 6,500,000 *12/100*7.613/365	Kshs. 16,268,876.71
• COSTS	Kshs. 351,518.00
<b>Total Decretal Amount</b>	<b>Kshs. 24,840,394.71</b>
<b>Less Amount Paid</b>	<b>(12,852,000.00)</b>
<b>Balance</b>	<b><u>Kshs. 11,988,394.71</u></b>

18 Pursuant to our advice vide the letter dated 13<sup>th</sup> December 2023, we have received a letter dated 28<sup>th</sup> February 2024 advising that DOD intends to settle the balance of the decretal sum being Kshs. 11,588,876.71 via instalments of Kshs. 2,000,000.00 bi-annually until payment in full. *(Annexed hereto please find copies of the letters dated 13<sup>th</sup> December 2023 and 28<sup>th</sup> February 2024 marked as Annexure 8 and 9, respectively.)*

19. In 2017, the Attorney-General gazetted counsel in the Ministry of Defence as Special State Counsel who thus took over the conduct of all the files where DOD was a party including this matter. A notice of change of advocates dated 11<sup>th</sup> December 2020 was served upon us on the 16<sup>th</sup> December 2020. *(Annexed hereto please find a copy of the Notice of Change of Advocates dated 11<sup>th</sup> December 2020 marked as Annexure 10)*

20. For further clarifications on the settlement of this matter, the Chief of Legal Affairs in the Ministry of Defence ought to be contacted.

  
Hon. J.B.N. Muturi, EGH  
**ATTORNEY GENERAL**  
**Encl**

Copy to: **Hon. Shadrack J. Mose**  
**SOLICITOR GENERAL**

Annexure 1

(7)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1051 OF 1996

ISAIAH ODUOR OCHANDA ..... PLAINTIFF

VERSUS

THE ATTORNEY GENERAL ..... DEFENDANT

JUDGMENT

The Plaintiff was, at the material time of this matter, employed as a soldier attached to 75 Artillery Battalion, Air Defence Unit.

As per the further Amended Plaintiff of 5<sup>th</sup> November, 2010, on 20<sup>th</sup> May, 1987, the Plaintiff while on the course of his duties, suffered severe neck injuries causing dislocation of the spinal cord. As a result of the said injury, he became a paraplegic. The Plaintiff was treated at the Force Memorial Hospital and National Spinal Hospital.

The Plaintiff averred that he was recommended specialized treatment in the United Kingdom, but the Department of Defence turned down the request.

The Plaintiff's services were discharged on medical grounds with effect from 13<sup>th</sup> April, 1995 and he was given the Discharge Certificate.

It is averred that despite completing necessary clearance document, he was not paid his lawful dues and that he has suffered loss and damages as a result of the said negligence.

He thus seeks prayers for:

- (1) Cost of medical expenses incurred.
- (2) Costs of future medical expense.
- (3) General damages
- (4) Special damages
- (5) Damages for breach of duty of care.
- (6) Discharge and Medical Assessment Board benefits.
- (7) Costs and interest of the suit.

The Defendant filed its Defence dated 7<sup>th</sup> October, 1997.

In paragraph 4, thereof, it is averred that the Defendant, the Department of Defence, owes reasonable duty of care towards the Plaintiff but denies that it has breached the said duty.

The Plaintiff joined issues in Reply of Defence.

The parties filed Agreed issues, which are:-

- (a) Was the Defendant in breach of the duty of care it owed the Plaintiff?*
- (b) Is the Plaintiff entitled to medical expenses incurred, damages for breach of duty of care, discharge and Medical Assessment Board benefits from the Defendant?*
- (c) Was the Plaintiff accorded proper medical treatment by the Defendant?*
- (d) Is the suit frivolous, vexatious and an abuse of the due process of the court?*
- (e) Is the Plaintiff entitled to the prayers set out in the Plaint?*
- (f) Is the Defendant liable?*
- (g) What order as to costs should be made?*

The suit was substantially heard by Hon. Kubo J. who has since retired and hence I picked up the thread at the fague end when the first defence witness was not permitted to adduce evidence on hearsay as well as on the documents not before the court. The learned Defence Counsel bowed out thereafter, by not giving any further evidence.

This court took over the matter after directions to file written submissions had already been given. I have thus been denied the opportunity to observe the demeanour of the witnesses.

EVIDENCE:

The Plaintiff's own evidence, in brief, is as under:-

He was forwarded (sic) by the Department of Defence, to train Kenya team for Wrestling for All African Games. On 20<sup>th</sup> May, 1987, he fell down while training the team and found himself at Forces Memorial Hospital, Nairobi. He was in the Hospital for treatment for spinal injuries. He relied on "Document 6" in his bundle to support his claim that he was advised to seek further medical treatment – physiotherapy in Great Britain.

It may be opportune to take note of the said document which is dated 25<sup>th</sup> November, 92 addressed to the Plaintiff by Major M. M. Muyodi.

The first paragraph thereof starts with:-

*"Reference to your request to be granted permission of authority to raise funds to seek further treatment abroad...."*

In the same letter, the Plaintiff was asked to furnish the name of Doctor who advised him on indication of possibility and availability of further treatment and the hospital that was to carry out further treatment so that the Military Doctor and his Doctor could officially contact the hospital authority abroad for estimates etc.

I do not have any evidence whether the aforesaid queries were answered by the Plaintiff.

The Plaintiff did not resume duties as he was disabled and in 1995, he received discharge instructions from which, according to him, was not forwarded formally to him.

The Plaintiff produced Document 1 in his bundle. It is dated January, 1995 without specifying the date thereof. (P Exhibit 1).

As per the said letter from Captain K. Kuria of his Battalion, he was entitled to 12 days privilege leave from 1<sup>st</sup> February, 1995, 60 days terminal leave from 13<sup>th</sup> February, 1995 and ration allowance for 72 days. His last pay was to be paid on 13<sup>th</sup> April, 1995. He was further entitled for gratuity, which the Plaintiff has agreed he was later paid. He was supposed to be paid his dues after receiving clearance certificate. As per his evidence, he was not entitled to pension as he had not completed 12 years of service. According to him, the Attorney General decides on discharge on medical grounds on behalf of Military Council. There is no substantiation to this averments.

The retirement age of employees of Arm Forces is 55 years. He enumerated his medical expenses:-

- (1) Caretaker -- shs,3,000/- to shs.5,000/=
- (2) Physiotherapist weekly shs.1,000/= per session
- (3) Fortnight urine test shs.800/= per test
- (4) The special cushion Kshs.25,000/= to change every three months.
- (5) Urine bag Kshs.75/= each and Uridom at shs.65/= per day.

I may note that when he resumed his examination on 14<sup>th</sup> June, 2006, the above figures changed to Kshs.1600/= for physiotherapist, that of the urine test became shs.1,800/= to Kshs.2,000/= from shs.800/=. Monthly body check of shs.2,000/=. wheel chair cost of Kshs.40,000/= to Kshs.50,000/= every three years were also specified by him.

In cross examination, he gave evidence on his previous services and training and stated that in Kenya Army, he was a M.A.D as Physical Education (PT) instructor with specific duties e.g. Judo and Wrestling Instructor. He agreed that there is no evidence produced by him that provision of medical benefits was one of his terms of employment. He also reiterated that he was ordered to go and undertake training of Kenyan Wrestling Team for All Africa Games. Although he referred to a letter dated 27<sup>th</sup> February, 1987 (sic) from Kenya Wrestling Association being in bundle of documents. I do not find it in the bundle. Similarly I do not find the same being produced in evidence.

He stated that he fell down during training when he went to support a member of the team. He agreed there were about 20 members of the team present but could not say whether anyone saw how he fell. He could not produce any medical record as they were taken away from him. The plaintiff also did not call any one present at the time of his fall as his witness.

He also stated that he did not know whether what was stipulated in the Discharge Instructions (P Exhibit 1) set out his entitlement and that how much the compensation would be when one is discharged under medical grounds and only testified that he should have been given a letter from Medical Board determining his dues looking at his condition.

He also agreed that in the bundle of receipts, the payment of shs.500/= to physiotherapist is shown. Then he went back to his original evidence of <sup>24500</sup> shs.1,000/= without explaining the aforesaid payment.

The second witness for the plaintiff was Dr. Joseph Chege Mwangi. He is duly qualified as a surgeon specialized in orthopedics. He examined the Plaintiff and made his report dated 28<sup>th</sup> February, 1996.

He testified that after examination, he confirmed that the Plaintiff suffered severe cervical cord damage and his neck was stabilized at the level of injury with

fusion of C3 – C4. He described his medical condition as tetraplegic and explained in his report the difference between tetraplegia and paraplegia. In the case of paraplegia only lower limb are involved in terms of motor function. But in this case, the upper limb also is involved. Weakness of lower limbs has put the plaintiff in wheel chair and weakness in upper limbs has made simple task performed by upper limbs difficult or out rightly impossible. The risk of pressure sore and urinary tract complication is always there according to his report.

In short, the Plaintiff needs constant care of home nursing and require regular medical checkup.

He also opined that his disability is 100% and did not expect any improvement in terms of motor function and sensory function.

He also opined during cross examination that, if a patient in spinal injury cases does not recover in 24 hours, he is unlikely to recover thereafter. He agreed he was given good treatment at Armed Forces Memorial Hospital.

PW3 is the wife of Plaintiff and confirmed the medical expenses which were and are incurred on the Plaintiff. What she added was the three times session with physiotherapist, gloves for Kshs.60 & 80, antiseptic (Detol) shs.400/= per week, once a month visit to a doctor for manual evacuation of his stool costing

Kshs.2,500/= to Kshs.3,000/=. She earns Kshs.20,000/= per month. She did not specify the details of source of her income. No documents were produced to substantiate these claims.

She also stated that despite the direction of the Tribunal Board (sic) made in 1995, they are not reimbursed the medical expenses tabulated at Kshs.723/=. She further stated that although some receipts are stamped to have been paid, they had not received the payment. She stated that pension as well as the medical expense of Kshs.723/= have not been paid.

This is the evidence before the court.

After the close of the evidence, the Plaintiff filed an application to further amend the plaint which was granted. The amendment included particulars of special damages stating:-

*"As will be adduced at the hearing hereof as the injury in issue, is of continuing nature."*

Paragraph 1 (a) as amended curiously describes the Plaintiff as an adult male of sound mind working for gain in Nairobi. Obviously the description stating that he is working for gain would negate his claim made in the plaint. However, considering the spirit of overriding objectives as stipulated in Sec. 1A

and inherent power of the Court granted under Sec. 3A of Civil Procedure Act. I am not taking said description as fatal to his case because the pleadings from both sides do not allude to such averment as true.

Both counsel filed written submissions. The Defendant having filed prior to the order of amendment of the Plaintiff was made, obviously, the issue raised therein as to the absence of particulars of special damages has been overtaken by events. I would follow the prior Ruling made on 13<sup>th</sup> June, 2006 in this matter and do find that the issue so raised is not competent and thus it is rejected.

On careful perusal of the pleadings, it emerges that the Plaintiff's claims are both on tortious and contractual liability. The merger, at many points, of both claims makes this suit a distinct one.

I shall begin with the contractual liability which is mainly averred in paragraph 10 of the Plaint.

It is conceded by the Plaintiff in his testimony that he has been paid gratuity.

On the issue of his claim for pension he has relied on a document bearing Ref. DOD/E77/56411/RECS. It refers to regulation 10 of the AF (Service pension

and gratuities) Regulations, 1980 concerning the commutation of pension. The same document dated 19<sup>th</sup> November, 1996 shows that on 22<sup>nd</sup> November, 1996 the Plaintiff has accepted that the provisions of the said Regulation 10 has been explained and he chose to commute 25% of his pension with a handwritten note that he was never interviewed by any officer from DOD. The Plaintiff has not given any further evidence on the said document except by stating that he has not been paid his pension. I do not have any evidence in confirmation or denial thereof. Thus, I would take his undisputed evidence as true.

Obviously, if he has not been paid his pension due, his legal rights under the employment contract are violated.

Thus I order that the Defendant shall forthwith pay all his dues on pension.

The second issue of his due is based on the finding of Board consisting of Lt. Col. (Rtd) LT Ukara, Dr. PS Achoda, Maj (Rtd) M H Madoka and JR Kyule. The Board directed that:-

*"Mr. Ominde and Major Onyango assist ex-soldier to receive his normal pension, disability pension and hardship allowance. His medical bills paid to private doctors should be refunded by submission of receipts to the Pension Department. The Tribunal*

*noted with regret that it has taken the Department so long to pay the desperate ex-soldier his dues"*

The above minutes of the appeal before the Board and its decision are undated, except the date of receipt of the Appeal which is 28<sup>th</sup> February, 1996.

Again this court cannot do better than to reiterate the said decision of the Board by way of the order of the court directing the Defendant to calculate the dues based on the said decision and pay forthwith, if not settled as yet. 7

The Plaintiff has produced the receipts (P Exhibit 20). Some of them are shown to have been paid by affixing the stamp. There are some receipts which show only medicines without the name of the Plaintiff. It shall be difficult for this court, without specific evidence to make an appropriate order except that of the physiotherapist. Moreover, the receipts are only upto the year 1996. There is nothing to show that the claimed sums as per the testimony are actually being paid or incurred including that of the caretaker. Moreover, the said claim is in realm of tortuous liability and I shall revisit the same in the later part of the judgment.

I also note that there was evidence to the effect that the monthly sum of Kshs.723/= was supposed to be paid by the DOD in respect of his medical

expenses. ~~The Plaintiff has not shown me any document to support that claim.~~

However, I would have to take the sum as undisputed and would take as such.

This payment is as per the agreement of his employment and that sum since his discharge, if not paid, has to be paid by the Defendant and I do find so. I direct that the defendant calculates the Plaintiff's due under this heading and the same be paid after that exercise.

Coming to the tortuous liability, the Plaintiff has averred that while in course of his duties, he suffered serious neck injuries amounting to total paralysis.

I have already observed hereinbefore that the Plaintiff did not produce any evidence of the advice for specialized treatment abroad. PW2 who was called as a medical expert by the Plaintiff testified that if within 24 hours of this kind of injury the patient does not improve, there is no hope for any cure and that he received good treatment at Armed Forces Memorial Hospital.

The Plaintiff has also testified the circumstances under which he sustained injury. He was sent or loaned to Kenya Team Committee to train Kenyan wrestling team for All African Games. To this extent the special relationship of an employer and employee is established. That could be the reason the Defendant has conceded reasonable duty of care. Although I do note that the Plaintiff could

have fell short in respect of the proof of negligence on the part of the Defendant  
as per the facts of his case. Be that as it may, I am bound by the pleading filed by  
the Plaintiff as well as total absence of any evidence from the Defendant. The  
Plaintiff has an obvious advantage and his claim of Duty of Care is thus allowed as  
conceded by the Defendant.

The Defendant had assumed responsibility by treating the Plaintiff in its  
Hospital and taken up the responsibility of his medical expenses upto and after his  
discharge from the hospital.

Thereafter as per the Regulation of the Arm Forces, his services were  
discharged and the Plaintiff accepted the gratuity and signed the pension  
commutation form as capitulated hereinbefore. I have also given my orders on  
the payment due and payable by the Defendant as claimed by the Plaintiff so for  
his employment dues are concerned.

The Plaintiff has, in the submissions claimed following damages:-

(a) General damages for pain, suffering and loss of amenities in the sum of  
Kshs.5,000,000/= and loss of future income shs.969,600/=

(b) Special damages,

- i) Medical expense (past) Kshs.2,863,728/= at the rate of Kshs.26,516/=p.m.
- ii) Future medical expenses for 15 years from the year 1996 - Kshs.4,772,880/=

In my considered opinion, the Plaintiff, on accepting the payments of gratuity and pension, opted to choose the settlement of his claim as per contractual obligations and rights of the employer and employee. *and obligations* Once so chosen, he cannot now ask for compensation under any other manner - legal or otherwise. It shall tantamount to unreasonable enrichment and/or double compensation and I thus reject the claim under that heading. *§*

I would reiterate that the court's hands are tied due to the pleadings of the Defendant and absence of any evidence from the side of the Defendant but as per the evidence led by the Plaintiff, he has failed to prove any negligence on the part of the Defendant and hence the breach of duty of care. *17*

As the Defendant has conceded to the duty of reasonable care, what is the reasonable care has to be determined from the circumstances of the case. *||*

In this case, the defendant having conceded a notional duty of care the court shall question whether the damage was forceable, whether there is a

relationship of proximity between the parties and whether the imposition of a duty would be fair, just and reasonable.

I would, from the facts of the case, note that having accepted to give the Plaintiff medical care, the Defendant shall be deemed to assume the responsibility for his medical care, and I do find so. I may not dwell on foreseeability and relationship between the parties which factors followed by the acts of the defendant.

As per the evidence led by the Plaintiff and supported by the Medical expert (PW2), one cannot ignore the fact that the Plaintiff shall need the medical assistance permanently. However, the costs thereof has to be shown and proved also by the Plaintiff. As indicated earlier, the Plaintiff has produced some receipts only upto 1996 and some of them have been shown to have been paid. Thereafter no further proof is given by the Plaintiff.

Moreover, the trial commenced in 2005 and the Plaintiff has failed to produce any supporting evidence of further medical expense, house-care expenses etc. It is trite law that the special damages has to be proved strictly.

The court, however, under these circumstances cannot wish away the medical needs of the Plaintiff and it has seen the Plaintiff on the wheel chair!!!

Doing best I could do in the premises, I shall award the sum of Kshs.6,500,000/= as special damages in respect of the medical expenses and shs.1,000,000/= for the pain and suffering.

I shall thus order that the Defendant shall pay:-

- i) *The balance of Pension due and payable to the Plaintiff.*
- ii) *The balance of the medical expenses as at 1996 on production of the receipts.*
- iii) *General damages in respect of pain, suffering and loss of amenities in the sum of Kshs.1,000,000/=.*
- iv) *Special damages in the sum of Kshs.6,500,000/= in respect of future medical expenses.*
- v) *The Defendant shall also pay costs and interest as per law.*

Orders accordingly.

Dated, signed and delivered at Nairobi this 2<sup>nd</sup> day of March, 2011

  
K. H. RAWAL

JUDGE.

02.03.2011

Answer (C)

ISAIAH ODUOR OCHANDA.

P.O. BOX 1043-00100.

NAIROBI.

DATE: 8<sup>th</sup> DECEMBER, 2014.

(21)

PROF. GITHEU MUIGAL,  
THE HONORABLE ATTORNEY GENERAL,  
DEPARTMENT OF JUSTICE,  
SIHERIA HOUSE,  
P.O. BOX 40112-00100,  
NAIROBI- KENYA.

*15/12/14 before letter to CS of Oduor.*  
*M. Muthy.*

Dear Sir,

**RE: H.C.C.C NO. 1051 OF 1996 AND MANDAMUS NO. 229 OF 2012: APPEAL FOR INTERVENTION**

I, Isaiah Oduor Ochanda, suffered spinal injury in May, 1987 from an accident while on military duty which resulted in me being tetraplegic (permanently bed-ridden and on wheel chair) to date. I later went through medical rehabilitation in the house from 1989-1994. I was discharged from the military service on 13<sup>th</sup> April, 1995 on medical grounds. I had served for ten (10) years and one hundred and fifty nine (159) days. My attempts to seek medical attention from specialized hospitals in the United Kingdom failed due to lack of funds.

When I was discharged from the service, I was not given any benefits. I had to seek the services of a lawyer to follow up payment for my gratuity and other compensations. I later went to the Pensions Appeal Tribunal under the Ministry of Finance that awarded me KShs. 777.90 per month as alleviation to my suffering. Though the award was made, payment was not effected. The Tribunal also awarded me medical reprieve where I was to be reimbursed for any treatment I received in any Kenyan hospital provided I produced receipts. After producing many receipts, I was not paid. It was after I sought legal intervention that I was paid gratuity.

I wrote several letters to the former Chief of General Staff and Chief Secretary of the Armed Forces to no avail. My personal attempts to go to the Department of Defence to ask for the said compensation were severely thwarted. As a result I ended up in court. The case dragged on from 1996 to 2011, for a total of fifteen (15) years. On 2<sup>nd</sup> March, 2011, judgment was delivered at the High Court where I was awarded a total of Kshs 19,078,191.78 (copy of Decree attached).

The Court Order was sent to your honorable office for appropriate action. I did not get any reply or any payment. It is at this juncture that my files at the AG's office and that at the High Court disappeared. I tried several times to go to Ulinzi House and the AG's office to follow the missing files. Nobody at the State Law Offices was ready to inform me what had happened to my file. I started following the State Counsel who had been handling the case on behalf of the AG, who was already transferred to Kakamega. On 28<sup>th</sup> March, 2012, I wrote a letter to the State Law Office, attention to the AG, for action. I also sought help from the Commission on Administrative Justice (Ombudsman) which followed the case of missing file and non-payment with the Principal Secretary, Ministry of Defence and State Law Office.


At this point, I was informed to forward copies of documents that I had in my custody so that my file could be reconstructed at the AG's Office. It is after my file was reconstructed with documents that I had reproduced that my original files reappeared. From that moment, I was tossed from Ulinzi House to the AG's Office to obtain the Court Order that was to be fulfilled. From Ulinzi House, I was informed that the AG had not written to DOD to authorize the Ministry of Finance to pay me. This forced me to go back to court to seek for enforcement of the court ruling (Mandamus No. 229 of 2012). I personally followed the Mandamus to no avail. Promises were made by my former employer that were never fulfilled. I wrote, through my lawyer, to see the Principal Secretary, Ministry of Defence. The PS replied and a date for the meeting was set on 24<sup>th</sup> July, 2014 in her office.

When I went to see the PS, I was intercepted and barred from meeting her. Only someone talked to us on phone from Staff Officer II. While I was there, I requested to go and see the PS but nobody was ready to take me since I was on wheelchair. I left DOD that I would be called the next day but that did not happen. My lawyer's attempt to write to the PS has not borne fruits up to date and no agreement has been reached with DOD so far.

From my very unfortunate and sad experiences, I have come to suspect that some people are trying to make my pleas appear as a confrontation between me, The Attorney General and the Principal Secretary, Ministry of Defence for their own benefit. It is for this reason that I am seeking for your personal intervention and direction on this case. I kindly request your honorable office to write to the Ministry of Defence compelling them to pay me all my entitlements to enable this case to rest once and for all. My total dues from 2<sup>nd</sup> March, 2011 when the ruling was made up to date is Kenya Shillings **Thirty two million, five hundred and eighteen thousand, four hundred and fifty eight and ninety six cents (KShs. 32,518,458.96).**

I beg to request for an audience with you personally for further clarification on this case. Enclosed are copies of all relevant documents showing all my struggles to obtain justice, despite my medical and physical status. I have been bed-ridden for twenty seven (27) years, with limited mobility on a wheelchair and with 100% disability status.

Yours Sincerely,

  
Isaiah Oduor Ochanda



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

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Our Ref. AG/CPT/OP/159/12

10th December 2014

Amb. Rachel Omamo, SC  
Cabinet Secretary  
Ministry of Defence  
Ulinzi House  
NAIROBI

Dear

*Sub-Memo*

RE: IN THE MATTER OF NBI HCC NO. 1051 OF 1996  
ISAIAH ODUOR OCHANDA-VS-THE ATTORNEY GENERAL

I have received a petition from the Mr. Isaiah Oduor Ochanda, the plaintiff in the above matter, appealing for the intervention of our office in respect of settlement of the decretal sum of Kshs. 19, 078, 191.78/- awarded to him by the High Court on 2<sup>nd</sup> March 2011. The decretal sum is now estimated at Kshs. 32, 518,458.96/- (copy enclosed for your perusal)

The petitioner states the he suffered spinal injury sometime in May 1987 while on duty and as a result he was confined to a wheelchair. The petitioner was subsequently discharged from military service on 13th April 1995 on medical grounds. We have enclosed several correspondences furnished to us by the petitioner demonstrating the parties desire to have the claim settled by way of a negotiated settlement.

Kindly let us have your instructions in light of the views expressed in our letter dated 25<sup>th</sup> June 2014 copied to you and the letter dated 3<sup>rd</sup> July 2014 by then Principal Secretary. We wish to advise you to designate an officer to liaise with our Mr. Lawrence Muiruri, Senior Principal Litigation Counsel, whom I nominated to represent our office with a view of expediting the matter.

Yours

*Githu Muigai*

GITHU MUIGAI, EGH, SC  
ATTORNEY GENERAL

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112 - 00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555 / 0732529995  
E-MAIL: info.statelawoffice@kenya.go.ke. WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILESELASSIE AVENUE  
P.O. Box 56057-00200, Nairobi- Kenya TEL: Nairobi 2224029 / 2240337  
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke



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**MINISTRY OF DEFENCE  
OFFICE OF THE CABINET SECRETARY**

11 FEB 2015

Telegrams Address: "DEFENCE"  
Fax No: 020-2726321  
Telephone: 020-2721100  
Email: [cabinet-secretary@mod.go.ke](mailto:cabinet-secretary@mod.go.ke)

ULINZI HOUSE  
P.O. Box 40668, 00100  
NAIROBI, KENYA

**MOD 11/31A**

**4th February, 2015**

Prof. Githu Muigai, EGH, SC  
Attorney General  
Office of the Attorney General and  
Department of Justice  
**NAIROBI**

Dear Prof Githu

**RE: NBI HCCC NO. 1051 OF 1996  
ISAIAH OCHANDA VS THE ATTORNEY GENERAL**

Reference is made to your letter ref AG/CPT/OP/159/12 dated 10th December, 2014 on the above subject.

This is to confirm that the Ministry still wishes to settle the matter outside the judicial process.

The Ministry has nominated Lieutenant Colonel D. O. Odeny (19921) to be the point of contact in the matter. He can be reached on 0770932104 or 020-2721100 Ext. 5659.

The Ministry recommends that you convene a meeting with the Plaintiff for the purpose of negotiating a settlement.

Yours Sincerely,

**AMB. RAYCHELLE OMAMO, SC  
CABINET SECRETARY**

# MINISTRY OF DEFENCE



Telegrams: "DEFENCE", NAIROBI  
Telephone: Nairobi 2721100  
When replying please quote

Ministry of Defence  
Ulinzi House  
P O Box 40668 - 00100,  
Nairobi, Kenya.

MOD/383/293/LEGAL

06 May 2015

The Attorney General  
Office of the Attorney General &  
Department of Justice  
Sheria House, Harambee Avenue  
**NAIROBI**

Attn: L Muiruri Ngugi

**NBI HCCC NO. 1051 OF 1996**  
**ISAIAH ODUOR OCHANDA VS HON ATTORNEY GENERAL**

We refer to the meeting held in your office when we offered the decree holder Kshs.12 million in full and final settlement of the claim.

The decree holder indicated he needed some time to make up his mind.

Kindly let us know whether he has now made up his mind to enable us determine how to proceed further.

**D'O ODENY**  
Lieutenant Colonel  
For Principal Secretary

Annex 3 (C)

(30)

AG/JRP/DOD/239/12

12<sup>th</sup> May, 2015

MOD/383/293/LEGAL

The Principal Secretary  
Ministry of Defence  
Ulinzi House  
P.O. BOX 40668-00100  
NAIROBI

Att: Lt.D.O ODENY

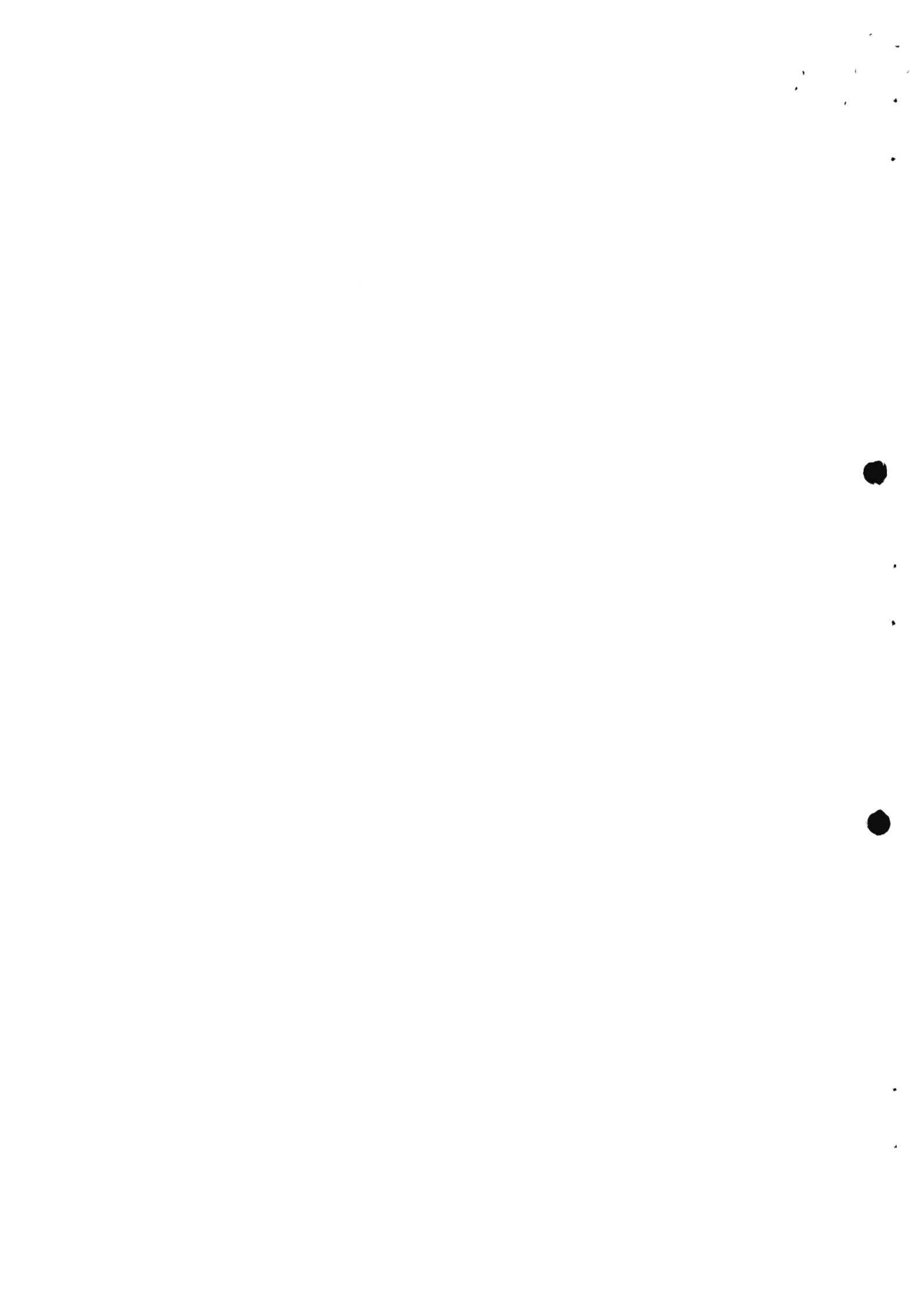
RE: NBI HCCC NO. 1051 OF 1996  
ISAIAH OCHANDA VS THE ATTORNEY GENERAL

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We acknowledge receipt of letter dated 6th May 2015.

We confirm the details as captured in your letter and note that we have written to the Plaintiff to give his final position.

L. Muiruri Ngugi  
Senior Principal Litigation Counsel  
FOR: ATTORNEY GENERAL



M... ..

Annexure 4

(2)

ISAIAH ODUOR OCHANDA,  
P.O. BOX 10413-00100,  
NAIROBI.  
25TH, MAY 2015.

OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF JUSTICE,  
SHERIA HOUSE,  
P.O. BOX 40112,  
NAIROBI.

**YOUR REF:AG/JRD/D.O.D/239/12:**

Dear sir,  
**RE:HCCC NO. 1051 OF 1996 NRB.**

Your letter dated 13<sup>th</sup> May 2015 on the matter related to me,D.O.D and your good office.

As indicated in your letter,i do not agree with what is in it.  
We did not agree on anything and even what the representative of the AG's office said, is not reflected in the letter sent to me.

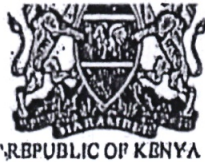
Please,I do remain as indicated in paragraph two above.

Yours faithfully,

*Isaiah Oduor Ochanda* 25/5/15

ODUOR OCHANDA I.  
Cell.phone no.0733-785-844

27 May 2015  
Isaiah Oduor Ochanda



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL

DEPARTMENT OF JUSTICE

Handwritten: *urw: 8/10*  
*Date: 19/11/19*

Our Ref: AG/JRP/DOD/239/12

Your Ref: MOD/383/293/LEGAL

Date: 8<sup>th</sup> November, 2019

Dr. Ibrahim M Mohamed  
Principal Secretary  
Ministry of Defence  
Ulinzi House, Lenana Road  
P.O. Box 40668-00100,  
NAIROBI

MINISTRY OF DEFENCE  
DEFENCE HEADQUARTERS  
**RECEIVED**

LEGAL SERVICES BRANCH  
P.O. Box 40668-00100, NAIROBI

RE: NAIROBI HCCC NO. 1051 OF 1996  
ISAIAH O. OCHANDA VS THE HON. ATTORNEY GENERAL

The above matter refers

The plaintiff filed this suit claiming damages for breach of duty of care. The plaintiff was an employee of the Kenya Army attached to 75 Artillery Air Defence Unit. In 1978, he was involved in the All African Games as a wrestling coach. He got injured during training and became paraplegic.

The matter went to full trial and a judgment was delivered on 2<sup>nd</sup> March 2011 in favour of the plaintiff in the following terms:

- a) The defendant to pay the plaintiff the balance of pension due and payable to him,
- b) The defendant to pay the plaintiff the balance of medical expenses as at 1996 on production of receipts,
- c) The defendant to pay the plaintiff general damages in respect of pain, suffering and loss of amenities in the sum of Kshs. 1,000,000
- d) The defendant to pay the plaintiff special damages in the sum of Kshs. 6,500,000 in respect of future medical expenses,
- e) The defendant to pay the plaintiff costs and interests as per the law.

The plaintiff applied for an order of mandamus to compel the defendant to pay the decretal sum and the application was granted. The decree issued in this matter remains unsettled to date.

The matter was last in court on 4<sup>th</sup> November 2019 where the Hon. Justice Marito directed that parties engage in serious negotiations with a view of having an amicable

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P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529993  
E-MAIL: [info.stitelawoffice@kenya.co.ke](mailto:info.stitelawoffice@kenya.co.ke) WEBSITE: [www.attorney-general.co.ke](http://www.attorney-general.co.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAJI/E SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/2240337

Handwritten signature: *Al Kir*

settlement. The judge further directed that in the event the matter is not settled by 27<sup>th</sup> November, 2019 the Principal Secretary to appear in court in person to show cause why the decree in this matter remains unsettled.

As you are aware, there has been numerous negotiations towards an amicable settlement of this matter which have not been fruitful. (refer to our letters dated 10<sup>th</sup> December, 2014, 26<sup>th</sup> June, 2015 and your letters dated 4<sup>th</sup> February, 2015, 20<sup>th</sup> March, 2015, 6<sup>th</sup> May, 2015)

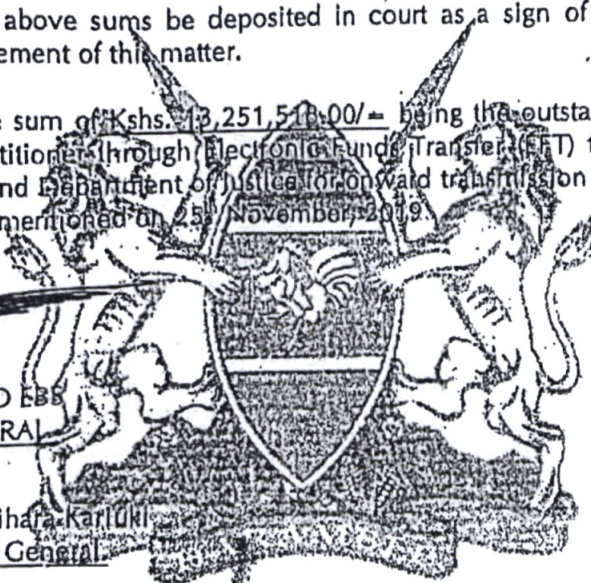
As a way forward we advise as follows:

- a) The decreed sums interest be computed for six years as per Section 4(4) of the Limitation of Actions Act as herein under:

General Damages	1,000,000.00
Interest on general damages... $1,000,000 * 12/100 * 6$	720,000.00
Special damages	6,500,000.00
Interest on special damages... $6,500,000 * 12/100 * 6$	4,680,000.00
Taxed costs	351,518.00
<b>TOTAL</b>	<b><u>13,251,518.00</u></b>

- b) The above sums be deposited in court as a sign of good will towards settlement of this matter.

Kindly transfer the sum of Kshs. 13,251,518.00/- being the outstanding decretal sum payable to the petitioner through Electronic Funds Transfer (EFT) to the credit of the State Law Office and Department of Justice for onward transmission to the Court noting the matter will be mentioned on 25<sup>th</sup> November, 2019.



KENNEDY OGETO EBB  
SOLICITOR GENERAL

Copy to: Hon. P.Kihara-Karuki  
Attorney General

Annexure G.

F.O. 21 (Revised)

257

# REPUBLIC OF KENYA

## PAYMENT VOUCHER

(DEPOSITS AND SUSPENSE)

Payee's Name and Address: ISIAH ODUOR OCHANDA P. O. BOX 36185 - 00200 NAIROBI

Particulars	AMOUNT	
	Shs.	Cts
Payment of deposit to the above named in NAIROBI HCCC NO 1051 OF 1996 (ISIAH ODUOR OCHANDA VS ATTORNEY GENERAL), This money has been received by vide receipt No. 301031 of 15.02.2022 and 303068 of 27.08.2020	12,852,000	00
	12,852,000	00

Amount payable in words: TWELVE MILLION, EIGHT HUNDRED FIFTY TWO THOUSAND ONLY CTS: NIL  
Authority Reference No. AG/JRP/DOD/239/12

Voucher Examine by	Internal Audit
Date	

### DEPOSITS AND SUSPENSE CERTIFICATE

I certify that the amount of payment has been recorded in the relevant Register and that adequate funds previously deposited and credited to A/C No 7310101 has not been repaid.

Net Deposit brought forward from previous Month A/C 7310101..... 12,852,000.00

Less/Add:

Total payment/receipt current month Kshs.....

Balance (+) Kshs. 12,852,000.00

Less This ENTRY- Vch. No ..... Kshs. 12,852,000.00

Balance (+) Kshs .....

I certify that proper reconciliation of the above balance has been carried out and that this payment is based on the reconciled balance

Date: 8/3/22 Signature: [Signature] Accountant i/c. Deposit and Suspense

**AUTHORIZATION**  
I certify that the payment has been made on proper authority. Where appropriate a relevant certificate has been completed in the space provided.

I am satisfied that the amount of payment as shown above is a proper charge to the item shown here below and hereby AUTHORIZE payment thereof without any alteration.

Signature: [Signature]  
Accounting officer/District Accountant  
Date: 24/03/2022

Vote	Head	Sub-Head	Item
Deposit	4-488	0000	7310101
1252			

Account No.	Dept. Vch. No.	Station	CASH BOOK		AMOUNT	
			Vch. No.	Date	Shs.	Cts.
4-488-0000-7310101		0101			12,852,000	00

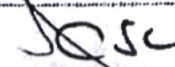
Delete inapplicable title

003287

APROPRIATE CERTIFICATE

I certify that the money is entered in ledger for payment of legal dues.

  
Signature



Designation



Date

Receipt not required when payment is made by cheque with form of receipts on reverse

Received in payment of the account stated on the face hereof the sum of	
Shs.....	Cts.....
(Shs..... Cts.....)	
Witness.....	
Date.....	.....
Signature or Thumbprint	



**MINISTRY OF DEFENCE  
OFFICE OF THE PRINCIPAL SECRETARY**

Telegrams: "DEFENCE", Nairobi  
Telephone: Nairobi 2721100  
Email: [ps@mod.go.ke](mailto:ps@mod.go.ke)  
Fax: 020-2723446

Ministry of Defence  
ULINZI HOUSE  
P O Box 40668 - 00100,  
NAIROBI, KENYA.

MOD 11/31A

11<sup>th</sup> October 2023

**Hon. Shadrack Mose**  
Solicitor General  
Office of the Attorney General &  
Department of Justice  
Sheria House  
**NAIROBI**



Dear *SG.*

**NAIROBI HCCC NO. 1051 OF 1996**  
**ISAIAH ODUOR OCHANDA VS THE HON. ATTORNEY GENERAL**

We make reference to your letter Ref AG/JRP/DOD/239/12 dated 8 November 2019. In the letter, you advised the Ministry of Defence to pay the Plaintiff Kshs. 13,251,518.00 which the Ministry has paid in full through your office the receipt of which the Plaintiff who is now the Applicant in Judicial Review No. 148 of 2013 has acknowledged receipt.

In the Judicial Review case the Applicant was seeking the payment of Kshs. 22,916,828.34 as per the certificate of order against the Government dated 14<sup>th</sup> November 2011 while in your letter you advised the Ministry to pay Kshs. 13,251,518.00. Your advice was based on Section 4(4) of the Limitation of Actions Act which Section limits the payment of interest to six (6) years after judgment.

Judgment was delivered on 2<sup>nd</sup> March 2011 and a decree was issued on 29<sup>th</sup> June 2011 at a sum of Kshs. 19,078,191.78 followed by the certificate of order against government for Kshs. 22,916,828.34. According to our interpretation the special damages of Kshs. 6,500,000.00 attracted interest of Kshs. 11,578,191.78 calculated from the date of filing suit that is 28<sup>th</sup> April 1996 up to the date judgment that is 2<sup>nd</sup> March 2011. The interest thus incurred was not subject to the Section 4 (4) of the Limitation of Actions Act which applies to calculation of interest after judgement.

The Applicant has been pursuing payment based on the certificate of order against government for Kshs.22,916,828.34 plus interest less the amount that has been paid. On 23<sup>rd</sup> September 2023, the Judicial Review Court issued warrants of arrest against the Principal Secretary, Ministry of Defence for failure to satisfy the decretal sum.

The Ministry of Defence therefore requests that you review your advisory and provide a way forward to alleviate the execution of the warrants of arrest as well as finally lay the matter to rest.

yours



**Patrick Mariru**  
PRINCIPAL SECRETARY

List of enclosures

1. Attorney General's letter Ref AG/JRP/DOD/239/12 dated 8 November 2019.
2. Judgment delivered by Justice K. H. Rawal on 2<sup>nd</sup> March 2011.
3. Decree issued on 29<sup>th</sup> June 2011.
4. Certificate of Order against the Government issued on 14<sup>th</sup> November 2011.
5. Summons against the PS MOD dated 3<sup>rd</sup> August 2023.

**Copy to:**

**Hon. J.B.N. Muturi, EGH**  
The Attorney General  
Office of the Attorney General  
Sheria House  
**NAIROBI**

**Cabinet Secretary**  
Ministry of Defence  
**NAIROBI**



REPUBLIC OF KENYA  
OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Our Ref: AG/DOD/26/96 & AG/JRP/DOD/239/12  
Your Ref: MOD 11/311A

13<sup>th</sup> December 2023

Hon. Patrick Mariru, CBS  
Principal Secretary  
Ministry of Defence  
Ulinzi House, Lenana Road  
P.O. Box 40668-00100,  
NAIROBI



RE: NAIROBI HCCC NO.1051 OF 1996  
ISAIAH O. OCHANDA VS THE HON. ATTORNEY GENERAL

Reference is made to the above matter, our letter dated 8<sup>th</sup> November 2019, and your letter dated 11<sup>th</sup> October 2023.

BACKGROUND

The plaintiff herein filed this suit claiming damages for breach of duty of care. The plaintiff was an employee of the Kenya Army attached to 75 Artillery Air Defence Unit. In 1978, he was involved in the All African Games as a wrestling coach. He got injured during training and became paraplegic.

The matter went to full trial and a judgment was delivered on 2<sup>nd</sup> March 2011 in favour of the plaintiff in the following terms:

- a) *The defendant to pay the plaintiff the balance of pension due and payable to him.*
- b) *The defendant to pay the plaintiff the balance of medical expenses as at 1996 on production of receipts.*
- c) *The defendant to pay the plaintiff general damages in respect of pain, suffering and loss of amenities in the sum of Kshs. 1,000,000.*
- d) *The defendant to pay the plaintiff special damages in the sum of Kshs. 6,500000 in respect of future medical expenses.*
- e) *The defendant to pay the plaintiff costs and interests as per the law.*

The Ministry now seeks our guidance on the accrual of interest on the special damages as awarded by Court on 2<sup>nd</sup> March 2011.

SIEMERIA HOUSE, HARAMBEG AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/071 19445555/0732529995  
E-MAIL: [info.statehouse@kenya.go.ke](mailto:info.statehouse@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)  
DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLAJIE AVENUE, P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

ISO 9001:2008 Certified



## OUR GUIDANCE

Section 26 of the Civil Procedure Act provides guidance on issue of interest. It provides;

*"(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.*

*(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum."*

In this case, the main contention is the interval of accrual of interest and whether the same is subject to Section 4(4) of the Limitation of Actions Act.

In the cases of *Lei Masaku vs Kalpama Builders Ltd* [2014] eKLR, *Oluoch Eric Goga vs Universal Corporation Ltd* [2015] eKLR, *Joseph Kiarie Njoroge vs Njue Kiarie* [2007] eKLR and *100 minor suing through father and next friend MOR vs Franciscan Sisters of the Immaculate* [2018] eKLR, *Mabeya, Aburili, Mumbi Ngugi JJ and Visram J* (as he then was) held and found that interest on general damages ought to run from the date of judgment while interest on special damages ought to run from date of filing suit.

In the case of *Francis Joseph Kamau Leatha vs Housing Finance Company of Kenya Ltd* [2015] eKLR, *Odunga J* held that interest therein would accrue from the date of filing of the suit to the date of judgment. He had due regard to the case of *Lwanga vs Centenary Rural Development Bank* [1999] 1 EA 175 where it was held that:-

*"The award of interest prior to the institution of the suit is rationalised in two ways: (1). that the plaintiff is thereby being compensated for being kept out of his money. He has been deprived of the use of his money from the time he incurred his loss. On that basis, interest is to run from that date. (2). that the defendant wrongfully withheld the plaintiff's money. The emphasis here is on the Defendant's wrongful withholding of the Plaintiff's money: On that basis, interest is to run from the date when the Defendant ought reasonably to have settled the plaintiff's claim. This is rather punitive."*

In *Shariff Salim & Another vs Malundu Kikava* [1989] eKLR, the Court of Appeal rendered itself as follows: -

*"There is no gainsaying the fact under Section 26 of the Civil Procedure Act, the award of interest on a decree for the payment of money for the period from the date of the suit to the date of the decree is a matter entirely within the discretion of the court. But this discretion being a judicial one must be exercised judicially. The whole idea at the end of the day is to do justice to both parties. In the case of Prema Lata vs Peter Musa Mbiyu [1965] EA 592, the appellant, in a suit for damages for personal injuries, was awarded Kshs 24,000, as general damages and Kshs 1,742.80 as special damages but the judge refused an application to award interest on these two sums from the date of filing suit until judgment. On appeal, the Court of Appeal for East Africa held that in personal injury cases, interest on general damages should not be awarded for the period between the date of filing suit and judgment but that interest should normally be awarded on special damages if the amount claimed has been actually expended or incurred at the date of filing the suit. The judge gave no reason for ordering that interest even on general damages was to be paid from the date of filing the suit. According to the authorities interest on general damages should be paid from the date of assessment which of course is the date of judgment.*

*That is the earliest date when the defendant's liability to pay does arise. That order even in*

relation to payment of interest on special damages is, in our view, unsupportable. Quite apart from the fact that the claim for special damages was not proved by any evidence beyond being itemised in the plaint, except for kshs 100, paid for police abstract, the remaining items had not been paid for at the date of the filing of the suit on August 19, 1983. As a result, it is impossible to ascertain the reasons which compelled the judge to award interest from the date of filing suit and this leads us to the inevitable conclusion that the learned judge wrongly exercised his discretion. This ground of appeal accordingly succeeds

Lastly, Justice J Kamau in the case of Heinz Broer v Buscar (K) Ltd & others [2019] eKLR held;

*"The basis of awarding interest on general damages from the date of judgment is premised on the ground that a plaintiff will not have been kept away from his monies because none would have been ascertainable at the time of institution of the suit. Interest on special damages would, however, accrue from date of filing suit as a plaintiff will have incurred expenses from the date suit is filed and he will have been kept away from his monies until judgment is delivered."*

From the aforementioned authorities, it is settled that special damages attract interest from the date of filing and only become due upon delivery of judgment.


Thus in the present case, the special damages of Kshs. 6,500,000.00/= ought to accrue interest from the date of filing the suit (28<sup>th</sup> April 1996) to the 2<sup>nd</sup> March 2017 subject to Section 4(4) of the Limitation of Actions Act. The special damages continued to accrue interest for a period of 6 years after delivery of judgment.

As per our advice dated 8<sup>th</sup> November 2019, we had calculated interest on special damages from 2<sup>nd</sup> March 2011 to 2<sup>nd</sup> March 2017. Therefore, the Plaintiff/Applicant is owed interest on special damages from 28<sup>th</sup> April 1996 to 2<sup>nd</sup> March 2011.

Accordingly, we advise settlement of the interest accrued on the special damages amounting to Kshs. 11,988,394.71/= as particularized therein below:

General Damages	Kshs. 1,000,000.00
Interest @12% WEF 02.03.2011 $1,000,000 * 12/100 * 6$	Kshs. 720,000.00
Special Damages	Kshs 6,500,000.00
Interest@12% WEF 28.04.1996 To 01.03.2011 $6,500,000 * 12/100 * 7,613/365$	Kshs. 16,268,876.71
COSTS	Kshs. 351,518.00
Total Decretal Amount	Kshs. 24,840,394.71
Less Amount Paid	(12,852,000.00)
Balance	<u>Kshs. 11,988,394.71</u>

Kindly transfer the sum of Kshs 11,988,394.71/= being the outstanding decretal sum payable to the petitioner through Electronic Funds Transfer (EFT) to the credit of the State Law Office and Department of Justice for onward transmission to the Applicant's Counsel to compromise the pending warrant of Arrest issued on 23<sup>rd</sup> September 2023.

  
HON. SHADRACK J. MOSE  
SOLICITOR GENERAL

Copy to: 1. Hon. J.B.N. Muturi, EGH  
ATTORNEY GENERAL

2. Hon. Aden Bare Duale, EGH  
Cabient Secretary  
Ministry of Defence  
Ulinzi House, Lenana Road  
P.O. Box 40668-00100,  
NAIROBI



**MINISTRY OF DEFENCE  
OFFICE OF THE PRINCIPAL SECRETARY**

Telegrams: "DEFENCE", Nairobi  
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Fax: 020-2723446

ULINZI HOUSE  
P.O. Box 40668 - 00100,  
NAIROBI, KENYA

MOD/11/31A

28<sup>th</sup> February, 2024

Hon. Shadrack Mose  
Solicitor General  
P.O Box 40112 – 00100  
**NAIROBI**



Dear *SG*

**NAIROBI HCCC NO. 1051 OF 1996**  
**ISAIAH O. OCHANDA – VS - HON. ATTORNEY GENERAL**

Receipt of your letter dated 13<sup>th</sup> December, 2023 is hereby acknowledged.

We, however, note that the total sum paid to the Claimant as at 16<sup>th</sup> September, 2021 was Kshs 13,251,518.00 and not Kshs 12,852,000.00 as indicated in your letter. The same is broken down as follows: -

RTGS dated 4 <sup>th</sup> June 2020	- Kshs. 4,852,000.00
RTGS dated 01 March 2021	- Kshs. 4,000,000.00
RTGS dated 22 April 2021	- Kshs. 4,000,000.00
RTGS dated 16 September 2021	- Kshs. <u>399,518.00</u>
<b>TOTAL</b>	<b><u>Kshs.13,251,518.00</u></b>


The balance therefore, stands at Kshs 11,588,876.71 which the Ministry is amenable to pay in instalments of Kshs 2,000,000.00 bi-annually until payment in full. Kindly let us have your authority to proceed as proposed.

Attached herewith for ease of reference are:

- a. Letter dated 13<sup>th</sup> December, 2023.
- b. Letter dated 8<sup>th</sup> November, 2019.
- c. RTGS dated 4<sup>th</sup> June, 2020.
- d. RTGS dated 1<sup>st</sup> March, 2021.
- e. RTGS dated 22<sup>nd</sup> April, 2021.
- f. RTGS dated 16 September, 2021.

In view of the above, kindly review the outstanding decretal sum payable to the Claimant and issue authority to settle the matter at Kshs. 11,588,876.71.

Yours

*Sincerely*  


**Patrick Mariru, CBS**  
PRINCIPAL SECRETARY

Answer 9 (Att/Sec/Def) 2/14

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**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
JUDICIAL REVIEW DIVISION  
JUDICIAL REVIEW NO 148 OF 2013**

IN THE MATTER OF AN APPLICATION BY ISAIAH ODUOUR OCHANDA TO CITE THE  
PRINCIPAL SECRETARY MINISTRY OF DEFENCE WITH CONTEMPT  
AND  
IN THE MATTER OF THE DECREE ISSUED IN ICC NO 1051 OF 1996  
AND  
IN THE MATTER OF THE JUDICIAL REVIEW ORDERS OF MANDAMUS ISSUED IN JR  
MISC APPLICATION NO 229 OF 2012

ISAIAH OCHANDA.....APPLICANT


-VERSUS-

THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT  
PRINCIPAL SECRETARY MINISTRY OF DEFENCE.....2<sup>ND</sup> RESPONDENT

**NOTICE OF CHANGE OF ADVOCATES**

**TAKE NOTICE** that the 2<sup>nd</sup> Respondent herein Principal Secretary Ministry of Defence has appointed F M Kioko Advocate, Ministry of Defence Ulinzi House, Lenana Road, P.O. Box 40668-00100 Nairobi, to act on his behalf in this matter in place of the Hon Attorney General. All future correspondences should be addressed to the underlisted.

Dated at Nairobi this.....11..... day of.....December..... 2020



**F M KIOKO  
SPECIAL STATE COUNSEL  
FOR THE HON ATTORNEY GENERAL**

**DRAWN & FILED BY:-**  
Hon. The Attorney General  
Attorney General's Chambers  
P.O. Box 40112  
**NAIROBI**  
[kiokofm@mod.go.ke](mailto:kiokofm@mod.go.ke)  
0723 497 026

**TO BE SERVED UPON**

Njugi B G & Company  
Advocates  
Eagle House 4<sup>th</sup> floor  
Kimathi Street  
P.O Box 10151-00400  
**NAIROBI**

