



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 107 OF 2003

MOSES KIPNGETICH CHERUIYOT.....PLAINTIFF

VERSUS

TEACHERS SERVICE COMMISSION.....DEFENDANT

RULING

Background

1. This ruling is in respect of the Plaintiff's Notice to Show Cause application dated 16/6/2017 and two Preliminary Objections (PO) dated 8th November 2017 and 20th November 2017 respectively by the Defendant. The Plaintiff/Decree holder is a former employee of the Defendant. The Defendant/Judgment debtor is a Commission established under Article 237 of the Constitution, 2010.

2. On 3rd July, 2002 the Plaintiff was unfairly dismissed from his employment with the Defendant necessitating the filing of this suit seeking for compensation and terminal dues. Parties were heard and judgment was delivered on the 26th November, 2010 in favour of the Plaintiff where the Defendant was ordered to pay a total of Kshs.1,704,823.10/- and interest at court rates, pension at appropriate rates and costs of the suit.

3. The Plaintiff filed a bill of costs and was awarded costs of the suit in the sum of Kshs.265,518/-. The Plaintiff claims that the Defendant has failed to pay the total amount of the decretal amount.

Pleadings

4. On 16th June, 2017 the Plaintiff filed a Notice to Show Cause (NTSC) application seeking to have the Defendant's Secretary to be arrested and committed to civil jail.

5. In response the Defendant filed a Replying Affidavit dated 8th November, 2017 and sworn by Josephine Mueni Maunda, the Director in charge of Human Resources Management and Development of the Defendant.

6. The Defendant further filed a Notice of Preliminary Objection (P.O.) dated the same day on grounds that:

(i) The Plaintiff's Advocates are not properly on record pursuant to the provisions of Order 9 Rule 9 of the Civil Procedure Rules 2010.

(ii) The Application offends the mandatory provisions of section 21 of the Teachers Service Commission Act read together with Section 21 of the Government Proceedings Act.

7. The Respondent averred that judgment was entered on the 26th November, 2010 and it was the duty of the Applicant to apply for the certificate of order against the Government and serve upon the Commission's accounting officer. The said certificate was served on 25th February, 2013 and upon receipt of the same the accounting officer prepared the decretal sum and wrote to the Plaintiff to furnish the Defendant with his bank account particulars to enable the decretal sum to be deposited.

8. On 3rd September, 2013 and 16th October, 2013 the Plaintiff wrote to the Defendant and informed them that he was he unable to give them the information and to hold on as his Advocate was following up a pending issue in court. That on the 25th November, 2013, the Plaintiff through his advocate served an application for review of the judgment upon the Attorney General. In July, 2014, the Plaintiff finally sent his bank account details to the Defendant and thereafter the Defendant's accountant released the decretal amount being the sum of

Kshs.1,110,019 after deducting statutory deductions of Kshs.35,193/-.

9. The Respondent stated that it had complied with the court's judgment, the Pension Act and the Regulations as it processed the Plaintiff's pension benefit and paid a lump sum amount of Kshs.1,056,018/- which was well above the Kshs.825,870/- awarded by the court. Further the Commission processed the Plaintiff's monthly pension which he is currently getting. It was further stated that the Defendant paid a total of Kshs.2,166,037/- excluding the monthly pension benefits which was over and above the total sum of Kshs. 1,704, 823/-.

10. The Respondents claimed that the Plaintiff was not entitled to any interest as the delay in settling the decretal amount was of the Plaintiff's own doing when he delayed to obtain and serve the certificate of costs and further when he delayed in providing his bank details. Further that the Plaintiff's computation was exaggerated and not based on any formula. The Respondent finally averred that the Plaintiff was in contravention of Order 29 of the Civil Procedure Rules as read with Section 21 of the Government Proceedings Act and prayed the application be dismissed with costs.

11. The Defendant filed another P.O. dated the 20th November, 2017 on grounds:-

(i) That pursuant to the provisions of Articles 162(2)(a), 165(5) and Section 12 of the Employment and Labour Relations Court Act, this honourable court has no jurisdiction to hear and determine the matter herein.

(ii) That pursuant to the decision of the Court of Appeal in Daniel Mugendi vs Kenyatta University, Nairobi Civil Appeal No. 6 of 2012: and in the interest of justice, the file herein be transferred to the Employment and Labour Relations Court in Nakuru for determination of the Decree holder's Application.

12. The court directed parties to file their written submissions on the P.O. and the NTSC applications. Parties filed their submissions and highlighted the same on the 7th December, 2017.

Submissions

The P.O. dated 8th November, 2017

13. The Defendant submitted that the Plaintiff's advocate was wrongly on record as the Advocate had not served the Defendant with either the Notice of Change or Consent in disregard of the mandatory provisions of Order 9 and therefore the Advocate was incompetently on record and therefore the NTSC application was incompetent. He relied on the case of **Jackline Wakesho vs Aroma Café, Industrial Cause 212 of 2013**.

14. On whether the NTSC offends the mandatory provisions of section 21 of the Teachers Service Commission Act and the Government Proceedings Act, the Defendant submitted that the NTSC was incompetent as proceedings against the Defendant were to be treated as proceedings against the government which should be by way of Order 53 of the CPR, 2010 and not Order 22 and therefore should be struck out. The defendant relied on **Simon P. Kamau & 19 others vs Teachers Service Commission & another Civil case No. 65 of 2006 (UR)**.

15. On whether the Plaintiff's Advocate was properly on record, the Plaintiff submitted that they recorded a consent with the former Advocates, Wanderi & Co. Advocates, on the 25th April, 2017 and that the consent was adopted on 26th July, 2017. That the consent was served together with the mention date and that Ms Mambo, who was from the Attorney General's office acknowledged the consent.

16. On the issue whether the NTSC offends the mandatory provision of section 21 of the Teachers Service Commission Act and the Government Proceedings Act, the Plaintiff submitted that section 21 is not relevant as it is concerned with offences by the Defendant and that the Defendant was estopped on relying on the Government Proceedings Act since it had made part payment of the decretal amount without depending on the GPA. He further submitted that the NTSC was not on execution but sought clarification on sums payable.

The P.O. dated 20th November, 2017

17. The Defendant relied on Article 162(2)(a) of the Constitution 2010 and section 12 of the Employment and Labour Relations Act that the ELRC has exclusive jurisdiction as the matter relates to employment and that the transitional phase ended as soon as the ELRC was constituted. The Defendant further submitted that the Plaintiff's assertions that the matter is at execution was not true as the court shall revisit issues concerning pension which is pertinent to employment and that the Plaintiff would not suffer any prejudice.

18. The Plaintiff in reply submitted that he relied on Section 22 of the Sixth Schedule of the Constitution, 2010 that the transitional clauses were meant to guide on how matters already filed could proceed. The Plaintiff stated that judgment was entered in this court and would be prejudicial to transfer the case at this stage as what is remaining is the determination of the decree.

The Notice to Show Cause

19. It was the plaintiff's submissions that the Defendant had failed to satisfy the decree of the court on the grounds that the Defendant had defaulted in payment of the decretal amount and pension and costs of the suit and the interest accrued.

20. On the decretal amount, the Plaintiff submitted that the decretal amount as per the judgment of the court was Kshs.1,704,823/- and that the Defendant had only paid a sum of Kshs.1,110,019.15/- leaving a balance of Kshs.594,803.25/-.

21. On interest, it was submitted that the Defendant partially paid the Plaintiff on the 15th August, 2014 which was a period of 3years 8 months since judgment was entered on the 26th November, 2010 and had accrued interest at the court rate of 12% making a total of Kshs.881,942.90/-. Additionally, up to date the Defendant had failed to pay the balance of the decretal amount plus interest being a total of Kshs.1,476,746.14/- and had accrued a further interest of Kshs.632,402.94/- on the outstanding amount.

22. On the issue of pension, the Plaintiff submitted that the Defendant had wrongly calculated the monthly pension of the Plaintiff at Kshs.4,543/- instead of a monthly pension of Kshs.10,000/- per month creating a difference of Kshs.5,457/- per month. As a result the Defendant is at default of the sum of Kshs.785,808/- calculated at the rate of Kshs.5,457/- for 144 months which the Plaintiff had not been paid.

23. On the issue of costs of the suit, the Plaintiff submitted that the Defendant had erred in combining the costs of the suit with the decretal amount reason being that at the time the decree was issued the costs had not been taxed yet. The Plaintiff claimed that the costs could not have been included in the sums already paid by the Defendant as the said sums had not fulfilled the decretal amount and therefore the costs of the suit still remained unpaid at Kshs.265,518/-.

24. The Plaintiff prayed that the court finds that the decretal amount had not been satisfied and that the Defendant owes the Plaintiff the sum of Kshs.3,180, 675.37/-.

25. The Defendant on its part submitted that it had settled the decretal amount in full. It submit that on the 15th August, 2014, it paid the Plaintiff the sum of Kshs.1,110,019/- being the unpaid salary of Kshs.795,740/- being his unpaid salary, Kshs.65,870/- special damages, Kshs.18,085/- being salary in lieu of notice and Kshs.265,518/- being the costs of the suit less the statutory deductions for the unpaid salary and the salary in lieu of notice.

26. On the issue of pensions, the Defendant submitted that it paid the Plaintiff a lump sum of Kshs.1,056,018/- through the Director of Pensions which amount was over and above the amount of Kshs.825,870/- issued by the court. On the issue of the monthly pension, the Defendant submitted that payment of pensions was done under the National Treasury and as per Legal Notice No. 317 of 1974, the power to calculate the pension of all civil servants was vested in the Director of Pensions and therefore the Plaintiff's calculations were misplaced and erroneous.

27. On the issue of interest, it was the Defendant's submission that the delay was caused by the Plaintiff as he delayed in obtaining the Certificate of Order against the Government under Section 21 of the Government Proceedings Act and only served them on the 25th February, 2013. That further the Plaintiff had delayed in giving the Defendant his bank account details as he claimed his advocate was following up on pending issues at court and only furnished his details in July, 2014. The Defendant submitted that the Plaintiff was estopped from reneging on his instructions which the Defendant acted on and start claiming interest.

28. The Respondent finally submitted that the monthly pensions were paid together with the arrears and prayed that the Application be dismissed.

Analysis and determination

29. The issues for determination arising from the two P.O.s are whether:

(i) The court has jurisdiction to hear and determine the NTSC,

(ii) The Plaintiff's advocate is properly on record,

(iii) The NTSC offends the provisions of Section 21 of the Teacher Service Commission Act and the Government Proceedings Act; and if not,

(iv) Whether the Defendant has satisfied the decretal amount in full.

30. On the issue of jurisdiction it is now trite law that jurisdiction is a fundamental issue and should be disposed of whenever raised and where a court is convinced that there is want of jurisdiction to entertain any matter before it to finality, that court has no other option but to down its tools. This was held by Nyarangi JA in the case of **Owners of the Motor Vessel 'Lillians' versus Caltex Oil (Kenya) Ltd [1989] KLR1, where he held:-**

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction . . . Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

31. Jurisdiction of the High Court stems from **Article 165** of the **Constitution, 2010**. Further **Article 165(5)** of the **Constitution** goes to limit the jurisdiction of the court and states:-

“The High Court shall not have jurisdiction in respect of matters—

(a)

(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).”

32. Article 162(2)(a) of the Constitution provides:-

*“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
employment and labour relations.”*

33. Pursuant to the authority granted in **Article 162(2) (a)** and **(3)**, Parliament enacted the provision of the Employment and Labour Relations Court Act No. 21 of 2011 to deal with employment and labour relations. Under the Act the Court is established under **Section 4** and **Section 12** of the Act provides for the jurisdiction of the court and states:-

“The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

(a) disputes relating to or arising out of employment between an employer and an employee;

(b);”

34. It is clear from a reading of the Constitution together with that of the Employment and Labour Relations Act that the High Court’s jurisdiction to hear and determine employment matter is limited as the exclusive original jurisdiction to do so has been given to the Employment and Labour Relations Court. The judgment that gave rise to the NTSC is based on the employment relationship between the Plaintiff and the defendant and therefore this court would lack *prima facie* jurisdiction.

35. The Plaintiff states that this court has jurisdiction to hear the matter as the suit was filed in this court long before the coming in of the Constitution, 2010 and relies on **Section 22** of the **Sixth Schedule** of the **Constitution, 2010** which provides:-

“All judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court.”

36. In **Khaemba Patrick Wanyonyi V Teachers Service Commission [2013] eKLR**, Gikonyo J on the interpretation of Section 22 of the Sixth Schedule of the Constitution pronounced himself thus:-

“ A proper interpretation of section 22 of the Sixth Schedule of the Constitution, 2010, as a general rule, is that all judicial proceedings on employment and labour relations pending before any court will have to be heard and determined by the Industrial Court that was established by Parliament through the Industrial Court Act, 2011, which is the legislation enacted pursuant to Article 162 (2) and (3) of the Constitution. The Industrial Court is the court envisaged under Article 162 (2) (a) of the Constitution...

The Constitution in Section 22 of the Sixth Schedule, permits cases which were pending before any court to be heard and determined by ... a corresponding court established under this Constitution... The only thing that courts should be careful not to escape their mind is adherence to the principles of retroactive laws as outlined herein above in dealing with cases that were pending before its establishment, in that, no right that had vested, or obligation or liability that had attached should be divested or absolved respectively except in accordance with the applicable law.”

37. I agree with the view of the learned judge with regard to the interpretation of section 22 of the sixth schedule of the Constitution, 2010 and agree that the Employment and Labour Relations Court is vested with jurisdiction to deal with all matters dealing with employment relations between an employer and an employee. Nonetheless the transitional provisions relate to proceedings that were “pending”. But what happens to matters that have already been determined to finality before the establishment of the Employment and Labour Relations Court and what remains is a question of satisfaction of the decree?

38. It is this court’s view that the transitional clause does not affect the jurisdiction of the high court where the matter was finalized before the establishment of the ELRC and all that is pending is the execution of the decree it passed. The court that passed a decree has the duty to execute the said decree. Further, transferring the matter at the execution stage would cause an inordinate delay to the conclusion of this matter that was instituted in the year 2003 and judgment delivered in the year 2010. I find that the high court has jurisdiction to hear and determine the NTSC as the court that passed judgment.

39. On whether the Plaintiff’s Advocate is properly on record, **Order 9 Rule 9** of the Civil Procedure Rules provides:-

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person

as the case may be.”

40. The Plaintiff's Advocate currently on record, M/s Nyairo and Company filed a consent dated 25th April, 2017 to come on record in place of the firm of M/s Karen Wanderi and Company Advocates. On the 26th July, 2017, the matter come up for a mention for adopting the said consent and it appears from the record that the court did not record the adoption of the consent but instead the court directed that the Plaintiff's Advocate to file the NTSC application, serve the Defendant and take a date.

41. The answer as to what happens when the record does not show that the court adopted the consent is to be found in the mischief sought to be cured by **Order 9 Rule 9**. In my understanding **Order 9 Rule 9** seeks to protect the interest of the outgoing Advocate when a client opts for a new Advocate after judgement.

42. That is why the provision requires either an application be filed and served on the outgoing Advocate or a consent filed by both the present and former Advocate. Where both Advocates have signed a consent, therefore the said consent should be adopted prima facie as an order of the court as it has satisfied the mandatory requirement of **Order 9 Rule 9 (b)**. In this instance I see no prejudice to be suffered by either party to necessitate the invalidation of the consent as filed. For this reason I find that the Plaintiff's Advocate is properly on record pursuant to the consent of the two Advocates.

43. The third issue relates to whether the NTSC offends the provision of **Section 21** of the **Teachers Service Commission Act No. 20 of 2012** and the **Government Proceedings Act Cap 40**.

44. **Section 21** of the **Teachers Service Commission Act** provides that:-

“Proceedings against the Commission shall be deemed to be proceedings against the Government and shall be subject to the Government Proceedings Act.”

Section 21(4) of the **Government Proceedings Act** provides:-

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

45. A reading of the above provisions clearly indicate that the proceedings against the Defendant shall be treated in the same manner as proceedings against the Government and that a Judgment debtor cannot execute against it under Order 22 of the Civil Procedure Rules, 2010. Further **Order 29 Rule 2(2)** of the Civil Procedure Rules provides certain orders against Government.

46. It is trite law that the proper way of instituting execution proceedings against Government is by way of an order of judicial review by way of an order of mandamus under **Order 53**. In **Republic v Attorney General & Another ex parte James Alfred Koroso NRB HC JR Misc. Appl. No. 44 of 2012** where Odunga J stated in this respect that:-

“In the present case the ex parte applicant has no other option of realizing the fruits of his judgment since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgment that he has been awarded is realized. Unless something is done he will forever be left babysitting his barren decree.”

47. However, looking at the submissions by the parties it is clear to see that the main bone of contention in the NTSC is a determination as to the decretal amount payable and not execution. The Plaintiff claims there has been part payment while the Defendant claims to have paid the decretal amount in full and final settlement of the judgment delivered on the 26th November, 2010. I find that the NTSC is merited as it does not seek to execute against the Defendant and therefore does not fall in the ambit of Section 21 of the TSC Act and the Government Proceedings Act. It is only after the NTSC is determined and the Defendant is found to be in arrears that the Plaintiff seeks to execute against the Defendant in the proper form.

Whether the Defendant has satisfied the decretal amount in full

48. The Plaintiff claims that the Defendant has failed to satisfy the decree as it combined the decretal amount and the costs of the suit together, has failed to pay interest and it has wrongly calculated the monthly pension of the Plaintiff.

49. On the issue of combining the decretal amount and costs of the suit, Section 21 (1) of the Government Proceedings Act states:

“Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to

the applicant.” (Emphasis mine).

50. A reading of the Section shows that the certificate of order against the government shall include the costs unless the court directs otherwise. Once the Defendant was served with the Certificate of Order, there being no order directing how the amounts were to be paid, it was left on it to process the payment as per the Certificate of Order and would not be expected to pay the decretal amount first then the costs later and I find the arguments of the Plaintiff have no basis in this regard.

51. On whether the Defendant satisfied the decretal amount, it is not in dispute that the Plaintiff was paid Ksh.1,110,019.85/- on 15/08/2014 by the Defendant for the unpaid salary, salary in lieu of notice, costs of the receipts and costs of the suit less statutory deductions. Further on the 15th June, 2016, the Defendant through the Director of Pension paid a sum of Ksh.1,056,018/- being his pension gratuity plus his monthly pensions from 12th August, 2005 to 31st May, 2016.

52. As correctly stated by the Defendant, the unpaid salary and salary in lieu of notice was subject to statutory deductions under Section 49 of the Employment Act which provides:-

“(1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following —

a. the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;

b. where dismissal terminates the contract before the completion of any service upon which the employee’s wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract;

c.

(2) Any payments made by the employer under this section shall be subject to statutory deductions.”

53. A close look at the said payments as disbursed by the Defendant clearly show that after deducting the statutory deductions, the Defendant paid the Plaintiff in full in terms of the unpaid salary, salary in lieu of notice, costs of the receipts and costs of the suit in full.

54. The other bone of contention is whether the pension payments were made in full. The Defendant has also shown that the Pensions Department paid the Plaintiff Kshs.1,056,018/= pension gratuity and monthly pension from 12/8/2015. The Plaintiff has not shown the court that the amount paid by the Director of Pensions was a different entitlement from the lump sum payment of pension ordered by the court and calculated at Kshs.825,128.12/-.

55. According to the judgment the court ordered payment of Kshs.825,128.12/- being lump sum payment of pension as lump sum pension and therefore payable by the Director of Pensions in accordance with the Pension Act. The Director of Pensions in his letter dated 15th June, 2016 to the Petitioner indicates that the Petitioner has been awarded a pension gratuity of Ksh. 363,440/-. This was in line with Legal Notice 314 of 1974 which delegated the power vested on the minister under Section 3 (1) of the Pension Act Cap 189 to the director of pensions. The Section states:-

“Pensions, gratuities and other allowances may be granted by the Minister in accordance with the Pensions Regulations, to the officers who have been in the service of the Government”

56. On the claim by the Plaintiff that the he is entitled to a monthly pension of Ksh.10,000/-. As stated above the prerogative to calculate pension lies with the Director of Pension and not any other person. The Plaintiff cannot now claim to calculate his own pension benefits as it is unprocedural and without the power of law and cannot therefore stand. There must be an internal mechanism within the Pensions Department through which corrections can be made.

57. On the issue of interest the Plaintiff claims for interest for the period of 3years 8months from the date of judgment till the payment of the decree. The procedure to be followed for satisfaction of a decree against the government is captured in section 21 (3) of the Government Proceedings Act provides that:-

“If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon.”

58. The Plaintiff herein served the Defendant with the Certificate of Order on 25th February, 2013. Thereafter the Defendant wrote to the Plaintiff on the 12th June, 2013 seeking for the Plaintiff’s bank account details to enable the decretal sum to be deposited in his account. On two different occasions the Plaintiff stated that he was unable to provide the said information as his Advocate was following up on pending issues in court, which was later found to be an application for review of judgment seeking general damages. The Plaintiff thereafter provided the Defendant with his details in July, 2014 after which the Defendant’s disburse decretal amount on the 15th August, 2014.

59. The Defendant cannot be faulted for the delay on the part of the Plaintiff in obtaining the Certificate of Orders against the Government for over two years. Section 21(3) is very clear that it was the Plaintiff who failed to give his bank details when the Defendant requested for the same. It would be unjust to allow the Plaintiff to profit from his inaction to the detriment of the tax payer.

60. Additionally even where the Plaintiff was to be entitled to interest, the Defendant is entitled to pay that which appears on the Certificate of Order under Section 21 of the Government Proceeding Act. This position has been stated by the court. See **Republic v Attorney General & another Ex-Parte Ongata Works Limited [2016] eKLR**.

Conclusion

61. In the end, these are my final orders:-

(i) This court has jurisdiction to hear and determine this matter.

(ii) The Plaintiff's Advocates being Nyairo & Co Advocates is properly on record.

(iii) The NTSC does not offend the provisions of section 21 of the Government Proceedings Act and is properly before this court.

(iv) The Defendant and the Director of Pension recalculate the Applicant's benefits and pension and deliver the calculations to the court.

(v) Each party to bear its own costs.

(vi) Parties at liberty to apply.

Orders accordingly.

Judgement signed

R.LAGAT KORIR

JUDGE

Judgment delivered, dated and signed at Nakuru this 21st day of February, 2019

JANET MULWA

JUDGE

In the presence of:

..... Court Assistant

.....For the Plaintiff

.....For the Defendant