



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 237 OF 2012

JOHN G. KONGO.....APPLICANT

VERSUS

THE CHIEF EXECUTIVE OFFICER,

RETIREMENT BENEFITS AUTHORITY.....RESPONDENT

ERIC LANGTON & GAIL LANGTON (*sued as trustees of Data centre ltd staff retirement authority Benefits scheme*).....1ST INTERESTED PARTY

KENYA NATIONAL ASSURANCE

COMPANY (2001) LTD.....2ND INTERESTED PARTY

AON MINET.....3RD INTERESTED PARTY

IN THE REPUBLIC OF KENYA

IN THE RETIREMENT BENEFITS APPEALS TRIBUNAL AT NAIROBI

CIVIL APPEAL NO. 3 OF 2011

JOHN G. KONGO.....APPLICANT

VERSUS

THE CHIEF EXECUTIVE OFFICER,

RETIREMENT BENEFITS AUTHORITY.....RESPONDENT

RULING

1. The Amended Notice of Motion dated 13th April, 2016 was taken out by the Applicant John. G. Kongo in which he sought for the following orders inter alia:

i. That this Honourable Court be pleased to grant the applicant herein leave to amend the Notice of Motion dated 19th May, 2014 that to wit

a) Join Eric Langton and Gail Langton (sued as Trustees of Data Centre Ltd Staff Retirement Authority Benefits Scheme), Kenya National Assurance Company (2001) Ltd, AON Minet as 1st, 2nd and 3rd Interested Parties respectively.

b) This Notice of Motion be construed as amended Motion for orders here below.

ii. That this Honourable Court be pleased to adopt the Orders of the Retirement Benefits Appeals Tribunal at Nairobi given on 24th May, 2011 against the interested parties.

iii. That this Honourable Court be pleased to compel the interested parties to pay Kshs. 205, 087.75 to the Applicant as ordered by the Retirement Benefits Appeals Tribunal at Nairobi and interests therein from the date of the orders.

iv. That costs of this application be provided for.

2. This suit is premised on a complaint brought before the Respondent against Data Centre Limited Staff Retirement Benefits Scheme pertaining his pension benefits following his termination from employment owing to gross misconduct on 21st August, 2000.

3. The Applicant challenged his termination at the Industrial Court vide **Cause Number 28 of 2002** in which the court held that he was entitled to his terminal dues. He was paid Kshs. 119,157.80 in relation to his termination but was not paid his retirement benefits.

4. He referred the matter to the Retirement Benefits Authority and was informed by the Authority that his matter was concluded vide letter dated 18th May, 2009. He consequently filed an appeal with the Retirement Benefits Appeals Tribunal which on 27th July, 2011 set aside the order made by the Retirement Benefits Authority and ordered that the trustees of Data Centre Limited Staff Retirement Benefits Scheme pay him Kshs. 205,087.75 within 30 days.

5. The Applicant has come before this court vide the amended motion seeking to adopt the order of the Retirement Benefits Appeals Tribunal and to compel the interested parties to pay him the above stated amount owing to the fact that the Respondent has not appealed against the decision of the Retirement Benefits Appeals Tribunal, hence this suit.

6. The Motion is supported by the Affidavit of the Applicant. The Motion is opposed by the 2nd Interested Party under their grounds of opposition and the affidavit by stating that they were not a party to the suit. They argued that the court lacked jurisdiction to hear the application.

7. I have considered the grounds stated on the face of the Motion and the facts deponed in support and against the Motion. The court is of the opinion it has been beseeched to address itself on the following issues:

a) Whether the court has jurisdiction

b) Whether the reliefs sought for are merited

8. On the issue of jurisdiction, by dint of Section 49 of the Retirement Benefits Act, the Tribunal has the powers of a Subordinate Court as enshrined under Article 169 of the Constitution. This in essence infers that the Tribunal can rely on Order 22, Civil Procedure Rules for execution of its orders/decrees as guided by Rule 12 of the Retirement Benefits (Tribunal) Rules, 2000. The Applicant in this application ought to have engaged the Tribunal to enforce its own orders which were granted in 2011 and went unchallenged by the Respondent. To this extent, the court lacks jurisdiction over this matter.

9. The reliefs sought cannot be issued as sought and therefore the court cannot adopt the orders of the Retirement Benefits Appeals Tribunal with a view of compelling the interested parties to pay him as prayed for.

10. In the end the motion dated 13.4.2016 is dismissed for want of merit.

Dated, Signed and Delivered in open court this 19th day of October, 2018.

J.K. SERGON

JUDGE

In the presence of:

.....For the Applicant

.....For the Respondent