



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION

JR CASE NO. 197 OF 2012

REPUBLIC.....APPLICANT

VERSUS

THE RETIREMENT BENEFITS APPEALS TRIBUNAL....RESPONDENT

EXPARTE

KENYA COMMERCIAL BANK STAFF PENSION FUND

AND

CHARLES ONDUKO.....1ST INTERESTED PARTY

RETIREMENT BENEFITS.....2ND INTERESTED PARTY

JUDGEMENT

Through a Notice of Motion dated 31st May, 2012, the Applicant (Kenya Commercial Bank Pension Fund) seeks **“an order of certiorari to remove into the High Court for purposes of it being quashed the order of the Retirement Benefits Appeal Tribunal Pension Appeal No.10 of 2010 Charles Onduko versus Retirement Benefits Authority and Kenya Commercial Bank Staff Pension Fund.”** The Applicant also prays for the costs of the application.

The Applicant’s case is that it is a Pension Fund whose sponsor is the Kenya Commercial Bank Limited. The Scheme was established in 1982 to provide retirement benefits to the bank’s employees. In 2010 Charles Onduko (the 1st Interested Party) who was a former employee of the bank filed Appeal No. 10 of 2010 against it before the Retirement Benefits Appeal Tribunal (the Tribunal). The Tribunal is the Respondent in these proceedings. The 2nd Interested Party herein namely the Retirements Benefits Authority (RBA) was the other respondent in the said appeal. On 23rd April, 2012 the Tribunal allowed an application for execution against the Applicant despite the fact that the Applicant had already paid the benefits claimed, in compliance with the Respondent’s orders.

It is the Applicant’s case that in the circumstances the Respondent’s decision is void, irrational, unreasonable and in breach of the principle of legitimate expectation. Further, the Applicant contends that the Respondent does not have jurisdiction under the Retirement Benefits Act (Act No. 3 of 1997) and the Retirement Benefits (Tribunal) Rules, 2000 to order for the execution of a decree or order. The Applicant submits that there was no proper decree capable of execution.

The application is supported by the verifying affidavit of Matano Nyaa sworn in his capacity as the Liaison Officer of the Applicant and the further affidavit of Fred N. Ojiambo, the advocate for the Applicant.

The Respondent and the 1st Interested Party did not file any papers in this matter despite evidence of service. The 2nd Interested Party appointed an advocate who informed the Court on 4th June, 2012 that the 2nd Interested Party was not taking any position. Again on 23rd July, 2013 Ms Onsando for the 2nd Interested Party informed the Court that the 2nd Interested Party was not taking a position in the matter since its interests would not be affected by the outcome of these proceedings.

Although the application before me is pegged on two grounds, I find that a consideration of one of the grounds is sufficient to dispose of this matter. In his verifying affidavit, Matano Nyaa avers that at the time the Tribunal issued the execution order the Applicant had already complied with the decision of the Tribunal and deposited the sum of Kshs. 813,364.15 in the account of the 1st Interested Party. He averred that this fact was brought to the attention of the Tribunal by a replying affidavit sworn by Christina W. Ndiho on 19th April, 2012 and filed on 23rd April, 2012.

There is a letter dated 24th September, 2013 addressed to the Deputy Registrar of this Court by Koceyo Titus of Koceyo & Company Advocates for the 1st Interested Party. The letter clearly states that the benefits the 1st Interested Party was claiming had been settled by the Applicant.

I do not find it necessary to hold that the decision of the Tribunal was irrational or unreasonable. It is clear that the Applicant's replying affidavit filed in response to the 1st Interested Party's application for execution was filed on 23rd April, 2012. This was the day the execution order was issued. It is possible that the affidavit may not have been brought to the attention of the Tribunal by the time the execution order was issued. However, there is a wrong which needs to be redressed. The execution order must be dealt with as letting it remain in force may jeopardize the interests of the Applicant. In exercise of the Court's inherent jurisdiction, I allow the application and issue an order of certiorari quashing the execution order.

On the issue of costs, I find that this application may not have been necessary in the first place. The Applicant ought to have pointed out the error to the Respondent and I suspect the matter would have been resolved. I will therefore make no order as to costs.

Dated, signed and delivered at Nairobi this 31st day of March, 2014

W. KORIR,

JUDGE OF THE HIGH COURT