



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 569 OF 2013**

**BETWEEN**

**ROSE WANGUI KARUGA .....PETITIONER**

**AND**

**KENYA RAILWAYS CORPORATION .....RESPONDENT**

**JUDGMENT**

1. The petitioner is acting in person. She has moved the court by a petition dated 28<sup>th</sup> November 2013. The petition is supported by her affidavit sworn on the same date.
2. Her case has been set out in the petition which states as follows;

*[?4] The Petitioner was at all times material employed by the Respondent as an Executive Officer 1 before she was unfairly terminated in 2002.*

*[5] This Petition arises out of a ruling delivered on 13th February, 2012 by Honourable Khaminwa J. in the High Court Civil Case number 214 of 1993 between Rose Wangui Karuga and Kenya Railways Corporation where the Honourable Judge ruled that the Petitioner herein, be paid her retirement benefits in full using the correct formula applicable to all employees, however, the Respondent has declined to honour the said ruling.*

*[6] The Certificate of terminal benefits dated 27th February, 2012 produced by the respondent to the Honourable Court in the in the High Court Civil Case number 214 of 1993 between Rose Wangui Karuga and Kenya Railways Corporation is misleading as it shows that the Petitioner's term of service is only one hundred and ten (110) months despite having served in the Respondent's Corporation for over thirty (30) Years.*

*[7] The Certificate of terminal benefits should therefore be declared a nullity and as such a criminal offence under the Penal Code, Chapter 63 of the Laws of Kenya.*

*[8] The activities of the Respondent above infringes on the Petitioner's fundamental right to have true and correct information that affects her as enshrined under Article 35(2) of the Constitution of the Republic of Kenya which information has seriously traumatized the petitioner contrary to the provisions of Article 29 (d) of the Constitution.*

*[9] The Respondent's conduct infringes on the Petitioner's right in the sense that Respondent*

*has continued to mislead the court as to the actual date the Petitioner officially retired from the service of the Corporation.*

*[10] The conduct of the Respondent is a gross abuse of the justice process thereby infringing and threatening to contravene the fundamental rights and freedoms of the Petitioner as set out in the Constitution.*

*?[11] Unless compelled, the Respondent shall imminently breach, subjugate and otherwise violate the Petitioners' inalienable constitutional rights as set out above.*

3. Consequently she seeks the following reliefs in the petition;-
  - a. *A declaration that the information the respondent has submitted in court regarding High Court Civil Case number 214 of 1993 between Rose Wangui Karuga and Kenya Railways Corporation regarding the actual date of her retirement is misleading and constitutes an infringement on the petitioner's fundamental right to have true and correct information that affects her as enshrined under Article 35(2) of the constitution of the Republic of Kenya.*
  - b. *An order compelling the respondent whether by themselves, their agents, servant's, or whosoever otherwise to correct and/ or delete the untrue and misleading information about the Petitioner's retirement from service of the respondent as entrenched under Article 35(2) of the Constitution of the Republic of Kenya.*
  - c. *An order compelling the respondent to quantify and pay the Petitioner's benefits using the correct figures as laid down in the Kenya Railways Corporation Act.*
  - d. *Cost of this Petition.*
4. The petitioner's claim is grounded on **Article 35(2)** of the Constitution which provides as follows, **"Every person has the right to the correction or deletion of untrue or misleading information that affects the person."**
5. In her oral submission, the petitioner stated that her case was that the information concerning the calculation of her dues was based on false information in that the respondent filed a false certificate in court which incorrectly indicated the period she had been employed and which was used for the purpose of computing her dues. Further that certain evidence given against her in previous proceedings was untrue as the person who testified against her was not employed at the time she was terminated. In the circumstances, she ought to be granted relief under the provision of **Article 35(2)** of the Constitution.
6. When the matter came up for directions on 9<sup>th</sup> December 2013, I directed that the case file for **HCCC No. 214 of 1993, Rose Wangui Karuga v Kenya Railways Corporation** be brought before the Court as it is apparent from the petition that the allegations raised in this petition concern issues arising in that case.
7. In **HCCC No. 214 of 1993**, the petitioner sued the respondent for defamation amongst other relief. In a judgment dated 15<sup>th</sup> April 1999, Aluoch J., dismissed her claim but awarded her Kshs. 200,000/= for loss and damage arising from an eviction from the defendant house which she occupied while employed. The court directed the defendant **"to calculate whatever dues were payable to the plaintiff upon termination of the services and pay such dues immediately."**
8. In order to enforce the judgment, the petitioner moved the court once again and Khaminwa J., in a ruling dated 6<sup>th</sup> February 2012, made the following orders;
  1. **THAT the applicant is entitled to be paid the balance of her retirement benefits in full compliance with the Kenya Railway Regulations and Constitution Section 112(Sic)**
  2. **THAT the Respondent shall certify all the amounts due to the Court within the next 21 days from the date of this order.**
  3. **THAT the payment of the sum of Kshs.1,480,031/= by the Respondent to the applicant was**

- made.*
4. **THAT costs of the application to the Applicant.**
  9. The petitioner then applied to commit the Managing Director of the Respondent to Civil jail for failure to comply with the orders. After hearing the matter, Waweru J., in a ruling delivered on 18<sup>th</sup> October 2012 held as follows, “**Anyway, I am satisfied from all the material before the court, that the plaintiff’s dues from the defendant were calculated (by the plaintiff) and fully paid by the Defendant in accordance with the judgement dated 15<sup>th</sup> April 1999 (Aluoch, J) and the order of 6<sup>th</sup> February 2012 (Khaminwa, J) there is no contempt of the order 6<sup>th</sup> February by the Defendant’s Managing Director. This very old matter should now be marked as fully settled. It is so marked.....**”
  10. In light of the judgment and subsequent decision by Justice Waweru, can this court entertain this petition? It is true that the petitioner complains of misleading information but such information was all integral part of the decision in **HCCC No. 214 of 1993** which dealt with her employment and termination. Prayer (c) of the petition is clearly aimed at re-opening the issue of re-opening the issue of the petitioner’s dues which I have shown above has been settled and indeed closed. I find and hold that the petition is an attempt to re-litigate matters settled in the previous case.
  11. **Article 35(2)** of the Constitution is also given effect through ordinary court proceedings where information and allegations made against a person are tested through the forensic process. In this case the issue of whether certain evidence is correct regarding her employment or whether a person who testified gave false information was considered in the case or was at least the subject of consideration leading to a judgment that has now been settled.
  12. What the petitioner seeks at the end of the day, as evidenced by the prayers in the petition is to re-open the issue of the calculation of her retirement benefits. The matter has been “**marked as fully settled**” by Waweru J. Furthermore the petitioner has lodged a Notice of Appeal against the said decision.
  13. The result of what I have stated is that the petition is frivolous and an abuse of the court process. It is dismissed.
  14. The judgment shall be served upon the firm of *Oraro and Company Advocates* for the defendants in **HCCC No. 214 of 1993**.

**DATED and DELIVERED at NAIROBI** this 11<sup>th</sup> December 2013

**D.S. MAJANJA**

**JUDGE**

Ms Rose Wangui Karuga, the petitioner, acting in person.