



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO. 1682 OF 2000**

JOYCE ODHIAMBO ODUOR..... PLAINTIFF

VERSUS

**THE REGISTERED TRUSTEES OF
THE
STANDARD CHARTERED BANK KENYA**

PENSION FUND..... DEFENDANT

JUDGMENT

This is a judgment in a suit where unfortunately proceedings were taken by another Judge who left the bench before the delivery his judgment. It is recorded and delivered subsequent to a laborious task of comparing the typed proceedings against the hand written notes of the Honourable Mr. Justice Mbiti, now retired, studying documents produced as exhibits by both the Plaintiff and the Defendant, without the benefit of hearing oral evidence. Written submissions by Counsel from either side have been of a great help in highlighting the issues and pointing out the grounds of contention for which I commend counsel.

The Plaintiff's case is basically a claim for underpaid pension dues which, according to the Plaintiff was occasioned by the Defendant's failure to consider a period of Eight (8) years and Eight (8) months of her service with the Standard Chartered Bank whose pension fund the Defendant's managed. The Plaintiff claims that having worked with the said bank since 21st October 1969 and having retired voluntarily on 7th November 1995 her pension dues ought to have been calculated for the entire period commencing 21st October 1969 and not from 2nd July 1979 as was done in her case. She claims as special damage a sum of Kshs.2,020,045.58 as particularized in paragraph 7 of her plaint and asks the Court to enter judgment against the Defendant for

- a) A declaration that the defendants are bound to compute the Plaintiff's pension dues for her entire period of employment with the Standard Chartered Bank.**
- b) Special damages as computed and proved at the hearing.**
- c) Costs of the suit with interest.**

The Defendants on the other hand deny that the Plaintiff is entitled to the "extra" pension claimed maintaining only that the Plaintiff was only entitled to pension from the time she became a member of the Pension Fund and upon the terms and conditions set out in the Standard Chartered Bank Kenya Pension Fund Trust deed dated 3rd June 1975, produced in evidence as "Defendant's exhibit 1". The Defendants

therefore contend that the computation of pension with effect from 2nd July 1978 was proper and the claim therefore has no merit. The Defendants are also of the view that the suit discloses no cause of action against them in view of the said computation and payment of pension.

Taking both the Plaintiffs case and the defence and there being no dispute that the Plaintiff was entitled to pension upon taking up early retirement, the issues for determination herein may be narrowed down as follows:

- 1. Under what provisions of the Standard Bank of Kenya Pension Fund Trust Deed was the Plaintiff's entitlement to pension governed?**
- 2. When did the Plaintiff become entitled to pension under the pension scheme and for what period of employment was such pension to be calculated?**
- 3. Is the Plaintiff entitled to the sum of Kshs.2,020,045.58 being pension dues calculated from 21st October 1969?**
- 4. Is the Plaintiff entitled to any other reliefs as sought in her plaint?**

The Plaintiff offered to retire voluntarily from the Standard Chartered Bank (hereinafter called "the Bank") by her letter dated 3rd October 1994 which she produced in evidence as her exhibit No.3.

The very act by the Plaintiff of suing "The Registered Trustees of the Standard Chartered Bank Kenya Pension Fund" confirms on the outset that the Plaintiff does concede that her pension entitlement was to be governed by the Trust Deed under which the said Fund and Trustees were established. She has indeed referred to the pension scheme both in her oral evidence and in submissions through Counsel. She also referred to the bank's terms for early retirement which she produced as exhibit No.5. The same provide, inter alia, for pension fund benefits (for those who qualify) [emphasis my own] and specifically provide under (c) that such qualification is under the pension rules for staff retiring under the age of 50. The Plaintiff fell in this category and she so stated in her evidence. The Plaintiff's testimony as recorded does not touch specifically on any of the provision of the Trust Deed but dwells mainly on the terms produced as exhibit No.5, despite the fact that the same operated subject to the express provisions of the Trust Deed and Rules. She also stated in her evidence in Chief that the letter of 2nd July 1978 which stated she was on permanent and pensionable terms did not specify the date on which she qualified to join the fund. This is a point which I note was taken up by Mrs. Guserwa in her submissions on behalf of the Plaintiff in which she stated that the said letter did not "specifically state whether or not the Plaintiff's earlier years of service would be excluded in the computation of her payments by the Fund". Mrs. Guserwa proceeded to justify this contention by invoking Schedule II Section paragraph 1 (b) of the pension rules which provide that

"A female member's pensionable service at any time shall be her period of full time continuous service with the Employer after the age of 19 with a maximum of 480 months (Emphasis Mrs. Guserwa's).

With due respect to Mrs. Guserwa, the above provision does not apply in the Plaintiff's case as the same applies to Employed Members Categorized as "B" being Employees admitted to membership of the Fund and

"whose period of continuous service with the Employer commenced on or after 1st January 1927 and on or before 31st December 1959"

as seen from the Membership Clause. The Plaintiff belongs to the Category "C" Employees who are defined as Employees admitted to membership of

the fund and whose period of continuous service with the Employer commenced on or after 1st January 1960. (same clause).

The Plaintiff's pensionable service therefore is as defined in Section 2 of Schedule II which clearly states in paragraph 1 that "A member's Pensionable Service at any time shall be his period of full-time continuous service with the Employer on or after 1st day of June 1975 and after the age of 20 with a maximum of 480 months."

The above provision clearly shows that the Plaintiff could not possibly claim for any pensionable service prior to 1st June 1975. It is worthy of note here that the Definitions clause does clarify that except where otherwise stated words importing the masculine gender include the feminine gender.

From the foregoing it is clear that where, as rightly stated by the Plaintiff the letter of appointment dated 2nd July 1978 did not expressly state when the Plaintiff qualified to join the fund the above provision clearly specifies her pensionable service, the letter did state however that the Plaintiff was

"now a member of the Bank's Kenya Pension fund in accordance with the Rules and regulations thereof...."

The membership clause talks of "Members of the Fund" and it is for such members that the payment of pension is intended. This being the case, it is unlikely that the Plaintiff would have drawn any pension whilst she was not a member. Her membership having commenced on 2nd July 1978, I find and hold this to be the effective date on which her pension computations are due. Having thus found and held I find that the Plaintiff is not entitled to the sum of Kshs.2,020,045.58 claimed for the period prior to 2nd July 1978 or any other relief sought in the Plaint. The Defendants did call the then Principal Officer for the fund who testified on how the computations were done. I note there is no complaint as to arithmetical or other error and that the only bone of contention was the period for which pension was due. Although he appears to admit that there may have been an error in the computation of Plaintiff's independent witness (PW.2) I find that the said admission, or indeed the said witness's exhibit (Exhibit No.10) does not alter the terms specified in the Trust Deed as to the correct pensionable service in respect of the Plaintiff. The letter of 30th June 1997 to PW.2 does not override the provisions of the Trust Deed and Rules which governed all members pensions equally depending on ones category. The letter alone does not provide a legal basis for the allegation that the Plaintiff was discriminated against since one cannot tell, simply by looking at the letter, without actual computations that PW2's pension was actually calculated as from her date of employment irrespective of the date when she was admitted to the fund. Even if that were to be so, I would still hold that her contract and that of the Plaintiff were independent of each other and subject to the doctrine of privity.

Taking the above into consideration I find that the Plaintiff's claim for pension for the period 21st October 1969 to 2nd July 1978 has no basis and cannot succeed. I have no

alternative but to disallow the suit and dismiss the same with costs to the Defendant. Orders accordingly.

Dated and Delivered at Nairobi this 22nd day of April 2005.

M.G. MUGO

JUDGE

In the presence of:

Mr. Olewe h/b for J.A. Guserwa Advocate for the Plaintiff

Mr. Aboge h.b for Chacha Odera Advocate for the Defendant