



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
MISC. CIVIL APPL. NO. 1033 OF 2003  
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY  
FOR AN ORDER OF MANDAMUS

**EDNA JANET MWOLO ..... APPLICANT**

**VERSUS**

**THE DIRECTOR OF PENSIONS ..... RESPONDENT**

**RULING**

1. The ex-parte, Edna Janet Mwolo seeks orders of Mandamus to compel the Respondent, Director of Pensions, Ministry of Finance to pay the Applicant herein the decretal sum in HCCC No. 2016 of 2001 being Kshs.508,157.25 with interest at 12% p.a. from 1st February 1998 until payment in full, plus a monthly pension of Kshs.6,207.85 with effect from 1st February 2002 and costs of the suit taxed at Kshs.111,397.00. 2. I would have quickly granted the orders sought, as I find no defence at all by the Respondent. It has now become common knowledge in this court and in public generally that the Director of Pensions never pays certain pensioners unless they obtain judgment in court and then enforce the same by way of Judicial Review proceedings (read mandamus).

This court has previously expressed distaste at that conduct and it was surprising when Miss Ouma appeared on 15th January 2004 and said: -

***“The Director of Pensions requires a copy of the judgment. I have not been able to join. The original suit is HCCC No. 2016/2001. I have not been successful and yet it is needed for audit purposes before she can pay .....”***

3. It is very well that she requires the judgment and decree but all these were and should have given by the Attorney General who appears in the matter before me. To keep pensioners in suspense regarding what really ought to be a simple administrative matter is degrading and humiliating. 4. Having so said and conscious of the fact that this court is bound both by precedent and its own legal snares, I am caught in the unfortunate position of having to dismiss an otherwise cut and dry case. 5. The ex-parte Applicant came to court by and using the wrong title to its Notice of Motion. This court has consistently stood by the effect of the decision in Farmers Bus Service and Others.

The Transport Licensing Appeal Tribunal (1959) E.A. 779 where it was said that the Notice of Motion should have been entitled: -

“Republic .....Appellant

Vs.

The Transport Licensing Tribunal ...Respondent

And

The Overseas Touring Co.(E.A.) Ltd

The Kenya Bus Services Ltd ..... Interested parties Ex-parte

(The applicants”

6. This decision has also been followed consistently and I recently did so in HC Misc. 738/2003, Republic vs. Senior Resident Magistrate, Thika & another, ex -parte Nancy Wanjiru Mutitu

7. The present Application has a title dissimilar to this one as the ex-parte Applicant is Edna Janet Mwololo and the Republic is the Respondent. In the Statement of Facts the Respondent is the Director of Pensions. Clearly the ex-parte Applicant is out of sync with the Rule and I am unable to admit the Notice of Motion.

8. I hereby strike out the Notice of Motion dated 8th December 2003. I shall however exercise my discretion and make no order as to costs but further order that the ex-parte Applicant do within 21 days file a proper Application under the Rules

. 9. The same once filed should be heard by another judge as I have clearly and having heard the substance of the matter formed an opinion which is prejudicial to the Respondent/Director of Pensions. Orders Accordingly.

Dated and delivered at Nairobi this 26th day of February 2004

I. LENAOLA

Ag. JUDGE

26.2.2004

Before Lenaola Ag. J.

Amos CC

Ruling delivered and signed in the absence of all parties.

I. LENAOLA

Ag. JUDGE