



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC APPLICATION NO. 519 OF 2001

PETER M. MWANGI.....APPLICANT

VERSUS

DIRECTOR OF PENSIONS.....RESPONDENT

RULING

Applicant – Peter Mwangi applies for:

(1) An Order of certiorari to remove into the High court for purpose of being quashed a decision made by Director of pensions payable to the applicant to be Kshs 353,293/10 pension Gratuity and a monthly pension of Kshs 4,916.15 and to quash the decision dated 5.12.2000

(2) An Order of mandamus directing the director of pensions to assess the applicants Gratuity attached to the statement herein being Kshs 640,806/85 pension gratuity and a monthly pension of Kshs 8,0110/05 and to pay the said amount at the prevailing commercial rate of interest

(3) Costs of this application be paid by the Director of pensions.

The application is supported by a statement verifying affidavit and the relevant documents.

The Judiciary was delinked from the Civil Service in 1993. It is not disputed that the salary scales applicable to Judiciary is the New Salary and Salary Scales for Judiciary – Revision which came in effect on 1/1/97 It is not also disputed that when applicant retired on 30.9.2000 he was in the salary scale PLS 6 earning £8031 p.a of the Judiciary salary scales. It is also not in dispute that when applicant retired the Director of pensions by a letter dated 5.12.2000 awarded applicant pension gratuity of shs 393,293/10 and monthly pension of shs 4,916/15 with effect form 1.10.2000. It is apparent that when calculating the applicants pension, the Director of pensions did not take into account the salary of applicant according to the salary scales applicable to Judiciary with effect from 1.11.97 It is clear from the affidavit of M.N Njukia – Director of pensions that the applicants pension was calculated on the basis of New Salaries for Kenya Civil Servants – personnel circular No. 16 of 27.10.97.

That is to say that applicants pension was calculated on basis of salaries of comparable grades in the Civil service

N.W Njukia deposes in paragraphs 5 of the replying affidavit that pending the formation of the supplementary scheme and declaration of service the cabinet approves that staff of the Judiciary retiring be paid pension on the basis of salaries of comparable grades in the civil Service.

That method of computation of pension of staff of the Judiciary was considered and rejected by the

court of Appeal in the case of The Director of Pensions versus Abdul Majid Cocker- Civil Appeal No. 50 of 1999.

The judgment of Shah J.A is very elaborate. His Lordship said at page 10 last para of the Judgement

“That statement on oath by the appellants is amazing. She is saying that despite the salary of the respondent having been increased by the Government Land approved by the Treasury such salary cannot be taken into account in computing the pension. The government is bound by the salary scales it approved for Judicial Officers. It cannot renege on that. The Government cannot say not that it has made no provision for payment of pension on the new salary structure.

There is no doubt at all that the salaries of Judicial officers were increased after due consideration by the government and no responsible officer of the government can say that despite such increase pension can only be calculated on the job group which exist no more for such officers

At page 12 of his judgment Shah JA after considering to provisions of regulation 20 of the pension regulations said.

“This can only mean that the respondent was entitled to his pension based on his last salary by reason of the working of regulation 20(1) which provides that

“The full emoluments enjoyed by him at that date in respect of that office shall be taken”

The respondent objects to the application on the same ground raised by the Abdul Majid Cocker case (supra).

The ratio decidendi of the Abdul Majid Cocker case is that the pension gratuity and month pension of staff of Judiciary retiring after the Judiciary was delinked from the civil service has to be conducted on the basis of prevailing salary scales in the Judiciary and not on the basis of salaries of comparable grades in the civil service.

That was the decision of the highest court in this country. The decision is binding on this court. It is an authorities interpretation of the law which the Director of pension should respect both in this case and in other similar cases involving computation of the pension retiring staff of the Judiciary.

The Director of pensions ignore the provisions of the pensions Act and the decision of the Highest court in this country. Thereby acting illegally and therefore in excess of or without jurisdiction.

An order of certiorari is amply justified.

The applicant has computed the pension gravity and the monthly pension and he asks for an order of mandamus to compel the Director of pensions to pay the pension gratuity and month pension as calculated by applicant.

There is no certainty that the computation by applicant is correct. It is the duty of the director of pensions to compute the pension gratuity and the monthly pension.

The order of mandamus should issue only to extend that it compels the Director of pensions to perform his statutory duties in accordance with the law. That was the view of the Court of Appeal in the Abdul Majid Cocker case (supra).

For the forgoing reasons , I allow the application with costs to applicant.

1. I grant an order of certiorari in terms of prayer (1) of the application
2. I grant an order of mandamus directed to the director of pensions (principal Pensions Officer)

compelling the director of pension to assess applicants pension gratuity and monthly pension on the basis of the salary scale PLS 6 of the NEW SALARY AND SALARY SCALES FOR JUDICIARY which came in effect on 1st November, 1997 and NOT on the basis of salaries of comparable grades in the Civil service

E. M. Githinji

Judge

22.4.2002

Mr. Mwanti for applicant present

Miss Choge holding brief for Kariuki Rano for respondent present