

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA T NAIROBI

MISC. APPLICATION NO.1615 OF 1999

REBECCA WANGARI KURIA APPLICANT

VERSUS

THE CITY COUNCIL OF NAIROBI & ANOTHER
RESPONDENTS

R U L I N G

The applicant was employed by the first Respondent and was a contributor to the second Respondent a Superannuation Fund. She has since retired from the first Respondent's employment. She has not been paid her retirement benefits.

She filed this application for orders of mandamus directed to the Town Clerk of Nairobi City Council, and the Managing Trustee of the Superannuation Fund, the first and second Respondents respectively to pay her, terminal benefits.

This application was by way of notice of motion. When the matter came up for hearing, counsel for the Respondents raised a preliminary objection on the ground that no application by way of mandamus lies against the Respondent and that the application is incurably defective, counsel for the Respondents further submitted that the orders sought can only issue against the Government and that the applicant ought to have come to court by way of plaint.

Counsel for the Applicant opposes the preliminary objection and submits that the application is properly before that retirement benefits are calculated in accordance to Statutory Provisions and the Respondents had even worked it out and prepared a cheque for Shs.188,567.85/= which had become stale before it was released to the applicant.

With due respect to counsel for the Respondents I don't agree with his contention that applicant should have come to this court by way of a plaint.

Retirement benefits are calculated as provided for in the statute and paid out to the retiree, and if payment is delayed the retiree can only come to court by way of notice of motion for orders of mandamus directed to the employer to pay the retiree, pension and terminal benefits.

For the above reasons this preliminary objection is dismissed with costs to the applicant.

Order accordingly.

Dated and delivered at Nairobi this 23rd day of September, 2000

J.L.A. OSIEMO

JUDGE