



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NUMBER 107 OF 2003

MOSES KIPNGETICH CHERUIYOT.....PLAINTIFF

VERSUS

TEACHERS SERVICE COMMISSION.....DEFENDANT

RULING

1. On 26th March 2010 , the court in allowing the plaintiff's claim against the defendant stated:

“The plaintiff also prayed for restitution of terminal benefits. This includes his pension rights. I would direct the Defendant (The Teachers Service Commission) to calculate at the appropriate rates and at the time of his retirement at age 55 years and pay the plaintiff his pension from October 2005, till he dies, and thereafter...” Emukule J.

2. Vide a document printed on 3rd June 2018 and bearing the pensions cash office stamp of 16th June 2016, the plaintiff's monthly pension is indicated as Kshs. 4,543/=.

3. On 16th June 2017, the plaintiff now the decree holder, filed an application for Notice to Show Cause against the Secretary to the defendant, now the Judgment debtor, to show cause why she should not be arrested and committed to civil jail.

4. The judgment debtor raised a preliminary objection against the NTSC claiming that the court had no jurisdiction and that the Judgment Debtor had not satisfied the decree as claimed.

5. This matter was heard by *R. Lagat Korir J* who in her ruling delivered on the 21st February 2019 made the order:-

“The defendant and the Director of Pensions to recalculate the Applicants benefits and pension and deliver the calculations to court.”

6. This order was made in the presence of counsel for the defendant. Counsel for the defendant asked for thirty (30) days. On 31st July 2019, counsel for the defendant appeared and submitted that his client had complied and had filed the report on computation. The court directed that the report of computation be served on the plaintiff.

7. I took over the matter on 7th October 2019. On 4th November 2019, counsel for the plaintiff submitted that only thing that was filed was a document from the director of pensions filed on 31st July 2019.

8. One was a letter from the Director of Pensions dated 18th March 2019 addressed to the Secretary/CEO TSC Ref No. APN/PC 269058 attentioned to C.O Anyuor Advocates. Reference '*RECALCULATION OF THE PENSION BENEFITS OF MR. MOSES KIPNGETICH CHERUIYOT TSC/NO 75389-APN/PC 269058*'. This letter simply states that according to their records Mr. Cheruiyot was paid his correct benefits and pension, calculated according to a set formula according to information provided by the employer.

9. The other letter was dated 23rd July 2019 signed by Shem Nyikutu Director of Pensions addressed to Secretary/CEO TSC Ref No. APN/PC 269058 attention to C.O Anyuor Advocate. Reference '*CALCULATION OF THE PENSION BENEFITS OF MR. MOSES KIPNGETICH CHERUIYOT APN/PC 269058*'. This one simply provides the formula for calculation pension and annexes the same document that was used in arguing the Notice To Show Cause.

10. It is clearly evident that the defendant and the Director of Pensions were responding to their own orders and not the orders of this court

and the plaintiff sought mention dates for them to appear and explain why they were not acting on the court order as issued by the court. There was neither appearance nor response by the defendants. In any event the defendant and the director were issued with a very clear order which to date has never been complied with.

11. Following several mentions, the court heard the plaintiff on why the two letters were not a sufficient response to the order. This was on 10th February 2021.

12. The plaintiff has filed a document bearing very elaborate calculation of what he considers to be the balance of the decretal sum and the unpaid interest he is owed over the decretal sum. His position is that he is owed interest on the balance of what was paid by the defendant.

13. Further that the parties have never revealed what his salary was at retirement. That the monthly pension of Kshs. 7,000/= was an under payment as he was supposed to be earning Kshs. 10,000/= per month.

14. In the documents filed in court the plaintiff has recalculated what he considers to be due to him from the defendant and the director of pensions.

15. On interest he states that judgment was delivered on 26th November 2010. He was awarded Kshs. 1,704,823.10/=. Teachers Service Commission did not pay until three (3) years and eight (8) months later. He has therefore calculated interest at 12% on the decretal sum, for three (3) years and eight (8) months; 26th November 2010 to 15th August 2014. However the court (*R. L Korir J*) at paragraph 58, 59 of the Judgment of 21st February 2019 clearly pointed out that the plaintiff served the defendant the **Certificate of Order** on 25th February 2013 the defendant wrote on 12th June 2013 from plaintiff's bank account. The plaintiff supplied the said bank account in July 2014, and payment was paid on 15th July 2014. The Judge clearly stated that the defendant could not be faulted for the delay. It took the plaintiff over two (2) years to obtain the certificate of orders and he failed to give bank details in time.

16. The only interest payable is what was on the certificate of order.

17. On pension, the same court stated that it was the Director of Pensions who can calculate that. The plaintiff cannot be heard to calculate his pension.

18. It is clearly evident that the neither the defendant nor the director of pensions has complied with the orders of this court. The orders were an outcome of the Judge having heard both sides. Neither the defendant nor the Director of Pensions has appealed against the said orders. The thirty (30) day stay sought by the defendant expired in March 2019. Failure to comply can only be seen as a deliberate disobedience of a court order.

19. This case has been in the corridors of justice since 2003. It involves an elderly Kenyan, a senior citizen who retired in 2005 after serving as a teacher for 30 years. It is now more than a decade since he got his judgment yet the defendant and the director of pensions are yet to comply fully with the same. It says something about how we treat the retired senior citizens and in the plaintiff's case the additional challenge of living with physical disability.

20. Why would a government officer whose job is to calculate pensions refuse or fail or neglect to do so in response to a court order? Why would another, whose job is to simply provide the correct records of the plaintiff to the Director of Pensions fail to do so for more than ten (10) years, and even when reminded to do so? If it not impunity, what is it? I cannot but agree with *Sila Munyao J* who in **Kipturgo Amdany v Johana Sirma Cheburet [2013] eKLR** stated;

“ It cannot be overemphasized that orders of the court must be respected by all. That is the only way that the rule of law can prevail. If people chose what orders to obey and what orders to disobey, anarchy will be the order of the day. The culture of disobedience of court orders must stop and the court is obligated to put its foot down to ensure that orders issued are obeyed.”

21. This court in two (2) judgments, one in 2010, the other in 2019 made those directions, their failure or refusal or neglect to carry out their duty without any explanation is a not only disobedience of the court order but also a violation of the rights of the plaintiff.

22. This court has the inherent power to ensure that the ends of justice are achieved and that its processes are not abused. The defendant and the director of pensions chose to file irrelevant documents in response to the court order. As a result the matter continues to run in the system, the plaintiff continues to come to court, the totality of that is an abuse of the process of this court.

23. These officers must be held to account. How, through Summons for each of them to appear in court and show cause why action should not be taken against each of them for failing to comply. To that end I order that Summons to issue to;

1. Director Human Resource Teacher Service Commission to appear in person and show cause why they have not complied with order of this court of 21st February 2019.

2. Director of Pensions to appear in court in person to show because why they have not complied with orders of this court of 21st February 2019.

3. Mention on 4th July 2021 to confirm compliance.

DATED and DELIVERED via EMAIL this 4th day of June 2021.

Mumbua T. Matheka

Judge

Court Assistant Edna