



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL CASE NO.230 OF 2008
STEPHEN NGARUIYA KANYANJA.....APPELLANT
VERSUS
COFFEE RESEARCH FOUNDATION.....RESPONDENT
(From the ruling and Orders of Joseph Malobe Were, SRM
in
Milimani Commercial Courts Civil Case No. 13558 of 2004)

J U D G M E N T

The Appellant filed proceedings in the lower court seeking judgment against the Respondent for sum of Kshs.179,882.40. The claim did not succeed which led to the filing of the current appeal. This court delivered its judgment on 3rd July 2012 setting aside the lower court decision. The court ordered that judgment be entered as pr0

ayed in the amended plaint.

The parties approached the court on 28th October 2013 seeking the interpretation of this court's decree issued on 3rd July 2012. The parties' main concern was order No. 2 in which the court ordered that judgment is allowed as prayed in the amended plaint. Parties agreed to file submissions on the computation of the Appellant's dues. The Appellant filed his submissions on 25th November 2013; the Respondent did not file their submissions. I will proceed without the Respondent's input on the computation.

The Appellant submitted that the decree dated 3rd July 2012 was allowed as prayed in the Appellant's amended plaint dated 21st September 2007. Under prayer number (d) the Appellant had prayed for a declaration that the defendant takes cognizance of the 2000/2001 salary increment of the Plaintiff when computing his pension dues and pays the Plaintiff any pension difference that the Plaintiff may continue to suffer pending the correction of the omission. The Appellant further submitted that the Respondent, having failed to take into account the said increment, the omission occasioned an injustice to the Appellant. That is to say that the Appellant has lost sums to which he is since entitled in the salary figure applied by the Respondent in respect to his pension which was at a lower figure.

The Appellant also submitted that he appointed a reputable firm of accountants in order to correctly

compute the pension due. The accountants found that the present pension is at a lower amount figure than what the Appellant is entitled to and that, therefore, there arrears of the pension now due should be ordered paid to Appellant by the court. The Appellant further submitted that as from 1/10/2001 to 11/1/2002 and to his retirement on 31/12/2013, the accountant found that the Respondent owes the Appellant a total sum of Kshs.4,401,763.00 in arrears. The Appellant submitted that the computation by the firm of accountants is proper reflection of the amount due to the Appellant.

I have carefully perused the material before me. The judgment and the decree was allowed according to the amended plaint. In the amended plaint the Appellant prayed as follows:

a. A sum of Kshs.166,591 being the difference between the pension dues paid to the Plaintiff and pension dues he is entitled to as at December 2004.

a. A sum of Kshs.12,625 being the Plaintiff's unpaid salary increment for three months in 2001 and seven days worked in January 2002.

c. A refund of Kshs.1,767.40 being unlawful deduction made in the Plaintiff's January 2002 salary slip.

d. A declaration that the defendant take cognizance of the 2000/2001 salary increment of the Plaintiff when computing his pension dues and pay the Plaintiff any pension difference that he may continue to suffer pending the correction of the computation.

The firm of accountants found that the Appellant suffered a reduction of Kshs.2,224,212 in pension from 2002 to 2013 which translate to compound sum of Kshs.4,341,148.00 at the expected 4% increment on pension each year. The finding was informed by the facts provided by the Appellant that his employer failed to implement a salary increment from Kshs.85,495.00 per month to Kshs.89,245.00 per month from October 2001 to January 2002. According to the Appellant there was an under payment of Kshs.3,750/- which translated to Kshs.12,581. The pension fund was also to be paid at Kshs.52,500.00 which also translated to Kshs.630,000.00 in 2002 based on a monthly salary of Kshs.89,245. The Appellant stated that the pension payment was to grow at 4% each year. For the year 2002 to 2013 pension paid to the Appellant at the rate of Kshs.50,292.00 per month which translated to Kshs.603,504.00.

From the foregoing, I have no reasons to disagree with the Appellant computations. **Section 10(1)** of the **Pensions Act** and **Regulation 20(1)** thereof provide for a retiree's last pay as the basis for the calculation of his gratuity and pension. The Section 10(1) of the Pensions Act reads:

"A pension granted to an officer under this Act shall not exceed the full pensionable emoluments drawn by him at the date of his retirement."

Regulation 20(1)(a) thereof reads:

"For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of not less than three years' pensionable service before his retirement—

a. in the case of an officer who has held the same office for a period of three years immediately preceding the date of his retirement, the full annual pensionable emoluments enjoyed by him at the date in respect of that office shall be taken into account.

I find that the computation made by the Appellant are a reflection of the amount due to the Appellant. Since that is in accordance with what he had sought in his Amended Plaint, and since the lower court allowed it as prayed, the Appellant was entitled fully to what he had claimed.

The Appellant filed submission showing in figures what the arrears of his pension amounted to. The Respondent found no need to oppose or put in different calculations or figures. This court will accordingly grant the figures sought by the Appellant as calculated by the Account. M/s Victor Mutisya &

Co. Accounts on 19th November 2013. The said Report shows that the Appellant was entitled to a sum of Kshs.4,401,763/- as at 19th November, 2013.

I hereby allow the sum as the judgment amount of the lower court with interest at court rates until full settlement.

To that extent this appeal is hereby allowed with costs. Orders accordingly. Dated and delivered at Nairobi this 5th day of March, 2015.

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D A ONYANCHA

JUDGE

N.B.

This judgment was written on 26th February, 2015 after a letter directing that Judgment be delivered was received by me from the Chief Justice.

Written submissions were ordered filed, by me, on 28th October, 2013. On 26th February, 2014 I reserved a judgment for 5th June, 2014. Respondent had failed to file his/its submissions by 5th June, 2014 and in a mention of 7th July, 2014 I gave a ruling date for 2nd October, 2014. But Appellant's written submissions were also found missing from the file then. Court directed Deputy Registrar to receive a copy of Appellant's submission which he sought by letter of 8th December, 2014. It was received on 15th December, 2014 but it was not brought to me until I got Chief Justice's letter. I regret the delay. This Judgment is fixed on 5th March, 2015 for delivery.