

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: TUNOI, J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. NAI. 290 OF 1999(108/99 UR)
BETWEEN

THE DIRECTOR OF PENSIONS APPLICANT
AND
ABDUL MAJID COCKAR RESPONDENT

(Application for stay of execution from a ruling of the
High Court of Kenya at Nairobi (Mr. Justice O=Kubasu)
dated 7th October, 1999.

in
H.C. MISC.APPLN. NO. 532 OF 1998)

R U L I N G

On 14th October, 1999, the applicant, the Director of Pensions, took out a Notice of Motion under **rule 5(2)(b)** of the Rules of this Court, for an order that there be a stay of execution of the order made by O=Kubasu, J on 7th October, 1999. By that order the learned Judge decreed that the applicant be committed to civil jail within 30 days of the order if she will not have enforced his previous order made on 25th January, 1999, whereby she was commanded to effect payment of pension and gratuity to the respondent, the retired Chief Justice the Honourable Mr. Justice A. M. Cockar.

The application was accompanied by a certificate of urgency duly signed by Mr. Muigai, counsel for the applicant, and an affidavit deponed to by the applicant. It is averred that the application is extremely urgent and should be heard at the earliest possible moment because the applicant stands to be committed to civil jail if the application is not heard as soon as possible.

The application is made on the grounds that the applicant has a meritorious appeal and that if the respondent proceeds to enforce judgment against her the appeal will be rendered nugatory and she would suffer irreparable harm if she is consigned to civil jail.

Owuor, JA declined to certify the application urgent. It is now before me for an inter-partes hearing under **rule 47(5)** of our Rules.

This is the second time this matter is coming up to this Court. On 16th April, 1999, we ruled that we entertained very grave doubts as to whether the appeal the applicant then intended to lodge would be arguable. Despite strong judicial sentiments the applicant, whose Counsel denies is a reckless civil servant, would not obey court orders. Instead, she is filing myriad of applications to forestall orders made by both the superior court and this Court. On the other hand, the respondent, a former head of the Kenyan Judiciary and now approaching 80 years, is constantly parading along Court corridors knocking loudly on chamber after chamber and court room after court room seeking justice. He has been denied his pension since December, 1997. His efforts to secure payments have all been in vain.

This Court has already stated that the subject matter of the whole dispute places the judges who have had to hear and determine it in a very uncomfortable position. The sooner it comes to rest the better for all of us.

Should I certify this application urgent, so that the Director of Pensions, who has manifestly shown that she has no use for and will not obey Court orders, should not go to civil jail? I do not think so. If I acceded to the application it would amount to a travesty of justice.

The applicant has refused to take the advice of the Attorney-General who is constitutionally the

principal legal adviser to the Government. Again, she cannot act on any letter which is not personally signed by H.E. the President himself (see the Ruling of this Court in Civil Application No. Nai.66 of 1999 -unreported). If this is so, then, one only would be excused if he surmises that the Director of Pensions is an employee of a parallel government. These actions clearly demonstrate that the applicant is a person who does not deserve the prayers of which she craves.

If she can do this to such a distinguished former Chief Justice who dedicated all his working life to the service of this country, woe unto you a junior civil servant in Kenya upon your retirement!

I dismiss this application with costs.

Dated and delivered at Nairobi this 27th day of October, 1999.

P. K. TUNOI

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR