



Kenya Ports Authority v Wekesa

High Court, at Mombasa January 17, 1992

Wambilyangah J

Civil Case No. 631 of 1990

January 17, 1992, **Wambilyangah J** delivered the following Ruling.

This is an application for review of this court's order whereby the arbitrators award was confirmed. Mr. Dulu for the applicant has argued 2 points and I have to deal with each of them.

In the 1st place he argues that the computation of interest as given in the arbitrators award is unduly generous to the respondent pensioner. I made a specific ruling on this aspect. I did not see any flow in the award on it and so, I confirmed the award. I do not think therefore that there has been shown to me any sufficient reason to warrant me to take a different view. And there was adequate logic for that view:- If the money had been made available to the pensioner right at the beginning he could have invested it and earned the same interest which the award seeks to give to him.

The next aspect is somewhat more complex. It is not in dispute that the pensioner purchased a house on a loan advanced to him by the employer. At that time the source from which the loan recovery was to be made was his employment emoluments: because he was still in employment. But he was retired while a substantial portion of the loan was still outstanding. And as his pension became a subject of a protracted dispute which culminated in the several proceedings, no recovery of the loan could have been made. The employer now seeks to be allowed to withhold Shs.315026/25 to cover the outstanding loan together with accrued interest. It is cogently contended for the employer that as the monthly pension payments amount to Shs.800/= the Pensioner's source from which the recovery of Shs.1,400/= per month is non-existent or else grossly inadequate. There is also the relevant factor of the Pensioner's life span to be considered on this aspect. The monthly payments would inevitably cease to flow as soon as he expires. Mr. Sagasi has vigorously pointed out the existence of a charge in respect of the house. Mr. Dulu demurred that no such charge was in fact registered. I do not at all find the employer's argument trifling. The recovery of the outstanding loan at this stage gives the Pensioner a house which would now legally belong to him. If he chooses to live it, there is the assurance of security; that nobody will seek to evict him or his family out of it any time. That feeling to a Pensioner is of immense significance. In the alternative if he should choose to dispose of it, he can still recover the money: it may even be sold for much more.

For all these reasons I prefer the version presented to me by Mr. Dulu. I order that the entire outstanding loan in respect of the house as shown in the schedule annexed to Mr. Dulu's affidavit should be deducted from the pension amount.

In the upshot I dismiss the application in respect to calculation of interest, but I allow it in respect to recovery of the outstanding house loan from the accrued pension amount payable to the respondent.

I make no order as to costs.