



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: GITHINJI, J. MOHAMMED & KANTAI, JJ.A)**

**CIVIL APPEAL NO. 62 OF 2015**

BETWEEN

ROSE WANGUI KARUGA ..... APPELLANT

AND

KENYA RAILWAYS CORPORATION.....RESPONDENT

*(Being an appeal from the Ruling and Order of the High Court of Kenya at Nairobi (Waweru, J.) dated 18<sup>th</sup> October, 2013*

*in*

H.C.C.C. No. 214 of 1993)

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**JUDGMENT OF THE COURT**

[1.] This is an appeal from the /ruling of the High Court (**Waweru, J**) delivered on 18<sup>th</sup> October 2013 dismissing the appellant's application for committal of the respondent's Managing Director for contempt of court order dated 6<sup>th</sup> February, 2012. The appellant has filed this appeal in person and as a pauper pursuant to the order of Nambuye, JA. (as she then was) dated 19<sup>th</sup> December, 2014.

[2.] Sometime in 1995, the appellant filed **Civil Suit No. 1925 of 1995** in the Principal Magistrate's Court Nairobi (PMCC No. 1925/1995) challenging the termination of her employment by a letter dated 29<sup>th</sup> June 1994.

The reliefs sought included an order that the termination of her services was illegal, null and void and payment of her withheld salary and other benefits. In 1993, the appellant had sued the respondent for damages for defamation in the High Court suit No. 214 of 1993 (HCCC No. 214 /93). On her application, PMCC No. 1925/95 was transferred to the High Court and consolidated with HCCC No. 214/95. During the hearing of the consolidated suits, the appellant stated that she was employed as a junior clerk by the respondent in 1967 and appointed on pensionable terms in 1985. The respondent conceded that the appellant was employed on pensionable terms in 1985.

The respondent's witness testified in the suit that the appellant's services were terminated on public interest which meant that her terminal benefits were to be reduced by 10%. It was also the respondent's

evidence that a cheque for payment of terminal benefits less 10% to the appellant was prepared which position the trial judge accepted.

On 15<sup>th</sup> April 1999, the High Court (**Aluoch, J.** – as she then was) ultimately dismissed the appellant's claim for wrongful termination and libel. However, the appellant was awarded Shs. 200,000/- as damages for loss and damage caused to her property during eviction from the respondent's staff quarters. In addition, the High Court directed the respondent to **"calculate whatever dues were payable"** to the appellant upon termination of her services and pay the dues immediately.

[3.] When the respondent neglected to calculate the dues payable, the appellant did a computation showing that the terminal dues owed to her were Shs.1,480,031/- and obtained an order from **Mbito, J.** dated 25<sup>th</sup> July 2002 and apparently issued on 30<sup>th</sup> July 2002 which stated partly thus:

***"The defendant/respondent be and hereby ordered to pay the amount of Shs.1,480,031/- to the plaintiff being the amount of benefits owing to her from the respondent."***

[4.] Pursuant to an application by the appellant dated 12<sup>th</sup> October 2006 in which the appellant stated in essence that the previous calculations of her benefits at Shs.1,480,031/- was based on outdated salary scale given by the respondent, Khaminwa, J. made further orders on 6<sup>th</sup> February, 2012 partly thus:

- i. the applicant is entitled to be paid the balance of her retirement benefits in full in compliance with Kenya Railways Regulations and Section and Constitution Section 112 (**sic**).
- ii. The respondent shall certify all amounts due to the court within the next 21 days from the date of this order.

[5.] The respondent's Human Resource & Administrative Manager prepared the appellant's benefits as shown in the payment certificate dated 27<sup>th</sup> February 2012. The computation indicated that the net benefits payable to the appellant were Shs. 45,704/30 as opposed to Shs. 1,480,031/- paid to her pursuant to the court order. The respondent reckoned that Shs. 1,434,326/70 (Shs.1,4480,131/-less Shs. 45,704/30) was thus due from the appellant to the respondent. The payment certificate was forwarded to court by a letter dated 27<sup>th</sup> February 2012.

[6.] By a notice of motion dated 2<sup>nd</sup> April 2012, the appellant applied for an order of committal to civil jail against the respondent's Managing Director for contempt of the court order dated 6<sup>th</sup> February 2012. The main ground of the application was that the respondent had failed or refused to comply with the order.

Mr. Nduva Muli, the Managing Director of the respondent filed a replying affidavit stating that the respondent had complied with the court order and that the appellant was seeking to re-open a matter that is already settled.

The application was heard by Waweru, J. who by a ruling dated 16<sup>th</sup> October, 2013 concluded:

***"I am satisfied from the material before the court, that the plaintiff's dues from the defendant were calculated (by plaintiff) and fully paid by the defendant in accordance with the judgment dated 15<sup>th</sup> April 1999 (Aluoch, J) and the order of 6<sup>th</sup> February, 2012 (Khaminwa, J).***

***There is no contempt of the order of 6<sup>th</sup> February 2012 by the defendant or its Managing Director. This very old matter should now be marked as fully settled. It is so marked."***

[7.] The appellant has appealed against the Ruling on eight grounds. The main grounds are that the court erred in finding that the appellant's dues were fully paid and in marking the matter as fully settled when the appellant's grievances and issues raised were not fully addressed.

The appellant has filed written submissions tracing the history of the dispute to which she has annexed several documents. She contended that **Waweru, J.** did not go through the record of PMCC No.1925/95 and HCCC No. 21/93.

Mr. Okoth for the respondent submitted, *inter alia*, that there was no breach of the court order as the certificate of payment filed in court, fully complied with the court order and as the order alleged to have been breached was a declaratory order which did not grant a specific and quantified coercive order capable of constituting contempt.

He further contended that the appellant's submissions were an attempt to re-open her original case when there is a judgment from which no appeal had been preferred.

[8.] We have considered the grounds of appeal and the respective submissions. The gist of the application for committal for contempt was that the respondent had failed to comply with the order of 6<sup>th</sup> February 2012. The order required the respondent to pay the appellant the balance of her retirement benefits in full in compliance with Kenya Railways Regulations and the repealed Constitution, and further to certify all amounts due to the court within 21 days.

It is clear from the order that full benefits that the appellant was to be paid were to be in compliance with the law. The court could not have intended that benefits payable would be contrary to the law. The respondent computed the full benefits which it genuinely reckoned were payable to the appellant and certified the amount to court within the time specified in the order.

[9.] The only reason why the appellant intimates that the order was not complied with is because she is not satisfied with the amount found payable to her. She had herself computed the amount four years previously and caused the court to enter judgment in her favour and the respondent paid the full decretal amount. The appellant however contended that the computation was based on false salary scales. The judgment she caused to be entered in her favour has not been set aside. Indeed, it was affirmed by a subsequent order.

She is stopped by the record (judgment) from contending that there is any balance due. Furthermore, her assertion that the computation is false was not supported by evidence of an actuary.

From the foregoing, we are satisfied that the respondent complied with the court order and that the High Court reached the correct decision. To find otherwise is to force the respondent to pay the appellant a claim that the respondent believes to be contrary to the law.

In the premises, the appeal is dismissed and we so order. Each party shall bear its own costs.

**Dated and delivered at Nairobi this 9<sup>th</sup> day of June, 2017.**

***E. M. GITHINJI***

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***JUDGE OF APPEAL***

***J. MOHAMMED***

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***JUDGE OF APPEAL***

***S. ole KANTAI***

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**