



**Jumar v Postal Corporation of Kenya (Cause E061 of 2023)  
[2024] KEELRC 903 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 903 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E061 OF 2023  
CN BAARI, J  
APRIL 25, 2024**

**BETWEEN**

**FREDDIE ODHOJI JUMAR ..... CLAIMANT**

**AND**

**POSTAL CORPORATION OF KENYA ..... RESPONDENT**

**JUDGMENT**

1. Freddie Odhoji Jumar (the Claimant) vide an amended statement of claim impleads the Postal Corporation of Kenya (the Respondent) seeking KShs 1,049,580/= in retirement benefits and interest on the amount from 30<sup>th</sup> June, 2021 till payment in full. The Claimant further seeks a declaration that his retirement benefits have been unlawfully withheld.
2. Despite service of summons, the Respondent neither entered appearance nor filed a response to the claim. The suit thus proceeded undefended.
3. The Claimant's case was heard on 6<sup>th</sup> February, 2024, with the Claimant testifying in support of his case. He adopted his witness statement and produced a bundle of documents filed as exhibits in the matter.
4. The Claimant then proceeded to file submissions in the matter.

**The Claimant's Case**

5. The Claimant states that he was employed by the Respondent (previously known as Kenya Post and Telecommunications Corporation KP&TC) on the 29<sup>th</sup> September, 1982 as Postal Officer III.
6. He contends that he diligently carried out his duties rising through the ranks to Head Postmaster, a position he held until 31<sup>st</sup> October, 2020.



7. It is his case that he voluntarily retired via a letter dated 27<sup>th</sup> July, 2020, which retirement was duly approved by the Respondent on the 3<sup>rd</sup> August, 2020, and which was to take effect from 1<sup>st</sup> November, 2020.
8. The Claimant further states that vide the same letter of the 3<sup>rd</sup> August, 2020, the Respondent informed him of his entitlement to his retirement benefits as per the Posta Pension Scheme Regulations.
9. The Claimant contends that despite a reminder on 15<sup>th</sup> February, 2021, the Respondent has not made good the payment of his benefits which as at 30<sup>th</sup> June, 2021 stood at Kshs 1,049,580/= . It is his further contention that the continued withholding of his benefits has occasioned him untold suffering, despite his 38 years of dedicated service to the Respondent.
10. The Claimant finally prays that this court intervenes to avert his continued suffering by awarding him the reliefs listed in his statement of claim.

### **The Claimant's submissions**

11. The Claimant submits that there is no demonstrable reason why the Respondent has not remitted the retirement benefits. He avers that it is unconscionable why the money was not forthcoming yet the Respondent acknowledged the sum via a letter dated 31<sup>st</sup> March, 2023. He sought to rely in the case of *Joseph Kibera Omote vs Kenya Airports Authority* [2019] eKLR, where Justice Ndolo stated that it was unjustified to withhold terminal dues irrespective of the mode of separation.
12. It is the Claimant's submission that since the amount in issue emanated from the Respondent's own calculations, it should be held to account.
13. The Claimant further submits that he is entitled to costs given the Respondent's action of withholding the benefits despite requests for remission. He had reliance in *Cecilia Karuru Ngayu vs Barclays Bank of Kenya & Another* [2016] eKLR and *Morgan Air Cargo Limited vs Everest Enterprises Limited* [2014]eKLR to support this position.
14. It is his further submission that he is entitled to interest based on the rationale enunciated in *Francis Joseph Kamau Ichatha vs Housing Finance Company of Kenya Limited* [2015] eKLR.
15. The Claimant in buttressing his entitlement to payment of interest, relied in the case of *Philip Peter Kerecha vs Space Sellers Limited & another* [2018] eKLR for the holding that:

“In economics, the basic rule on debts is that, the cost of waiting is interest. In this case, the respondent forced the claimant to wait for his debt for almost 4 years after filing this suit. It is therefore fair and just to award interest on the Kshs 155,354/= to the Claimant. The interest shall be at the court rates from the date of filing the suit till 8/5/2017.”

### **Analysis and Determination**

16. Upon careful consideration of the pleadings herein, the Claimant's testimony and submissions, the issues that arise for determination are:
  - i. Whether this court has jurisdiction to entertain this suit; and
  - ii. Whether the Claimant is entitled to the remedies sought.



## Whether this court has jurisdiction to entertain this suit

17. The Claimant's evidence is that he was an employee of the Respondent between 29<sup>th</sup> September, 1982 to 1<sup>st</sup> November, 2020. Further, his claim relates to pension benefits held under a retirement benefits scheme to wit Posta Retirement Benefits Scheme.

18. The question is whether this court has jurisdiction over pension claims held under a registered pension scheme. Nyarangi J in *Owners of Motor Vessel Lilian "S" v Caltex Oil* (1989) eKLR illuminated the centrality of jurisdiction in the following words:

“Jurisdiction is everything and without which, the Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

19. Further, Section 12(1) of the *ELRC Act*, spells out the jurisdiction of the Court as follows: -

“(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the *Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

- (a) disputes relating to or arising out of employment (emphasis mine) between an employer and an employee;
- (b) disputes between an employer and a trade union;
- (c) disputes between an employers' organisation and a trade union organisation;
- (d) disputes between trade unions;
- (e) disputes between employer organisations;
- (f) disputes between an employers' organisation and a trade union.....”

20. Section 46 of the *RBA Act* states thus: -

“(1) Any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or the Act under which the scheme is established.”

21. Further Section 48 of the *RBA Act* states: -

“(1) Any person aggrieved by a decision of the Authority or of the Chief Executive Officer under the provisions of this Act or any regulations made thereunder may appeal to the Tribunal within thirty days of the receipt of the decision.”



22. In my view, and guided by the foregone provisions of the law, a dispute concerning payment of pension benefits held under a pension scheme, falls under the mandate of the Chief Executive Officer of the Retirement Benefits Authority and not the Employment Court.
23. This position is buttressed by the holding of the Supreme Court of Kenya in *Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme)* [2019] eKLR where the court had this to say: -
- “In our view, once a member leaves the employment of a Sponsor, by becoming a pensioner, there is no longer a relationship of employer-employee that exists between such a pensioner and the sponsor. The relationship that exists in that case becomes that of trustee and beneficiaries (members) of a trust and that relationship is governed by the *Retirement Benefits Act, Trustee Act* Cap 167 of the laws of Kenya and the general common law on the law of trusts. It is important to note that nowhere in the Employment and Labour Relations Court Act is there jurisdiction conferred on the Employment and Labour Relations court to resolve issues between trustees of a pension scheme and members of the scheme (pensioners).”
24. It then follows that by reason of there not being an employer-employee relationship between the Respondent and the Claimant, the Claimant having left the employ of the Respondent on 1<sup>st</sup> November, 2020, this Court has no jurisdiction to entertain this suit.
25. It is also clear that the provisions of the *Retirement Benefits Act* enumerated in paragraphs 20 and 21 above, do not place a pension dispute within the jurisdiction of this Court. Section 46 and 48 of the *RBA Act*, go on to clearly stipulates where such a dispute would lie, and which certainly, is not before this court.
26. In the premise, I concluded by holding that this court is not clothed with the requisite jurisdiction to hear and determine the Claimant’s claim, and I must thus proceed to down my tools.
27. The Claimant’s claim is struck out with no orders on costs.
28. Judgment of the Court.

**DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 25<sup>TH</sup> DAY OF APRIL, 2024.**

**CHRISTINE. N. BAARI**

**JUDGE**

Appearance:

Mr. Bwire h/b for the Claimant

N/A for the Respondent

Erwin Ongor - C/A

