



Mundwetugi v Kingland Trust & Benefits Services Limited & 2 others (Cause 460 of 2019) [2023] KEELRC 3216 (KLR) (7 December 2023) (Judgment)

Neutral citation: [2023] KEELRC 3216 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 460 OF 2019
B ONGAYA, J
DECEMBER 7, 2023
(FORMERLY HCCC NO. 198 OF 2009)

BETWEEN

OBADIAH KIIRI MUNDWETUGI CLAIMANT

AND

KINGLAND TRUST & BENEFITS SERVICES LIMITED 1ST RESPONDENT

STANDARD CHARTERED KENYA PENSION FUND 2ND RESPONDENT

STANDARD CHARTERED BANK OF KENYA LIMITED 3RD RESPONDENT

JUDGMENT

1. The claimant filed the amended Plaintiff on June 19, 2009 through Onyoni Opini & Gachuba Advocates. The claimant prayed for judgment against the respondent for:
 - a) The plaintiff's accrued pension as at April 19, 2005 or any other higher amount found to be due to the plaintiff in respect of pension after taking accounts.
 - b) An order for accounts and declaration by the 1st and 2nd defendants of the mode of calculating the plaintiff's pension as per the 2nd defendant's pension scheme regulations.
 - c) Interest and/or additional accumulated pension benefits from April 19, 2005 till the date of payment in full.
 - d) A declaration as to who between the 2nd and 3rd defendants paid the sum of money paid to the plaintiff in October 2002 and who among the said defendants should pay the plaintiff in respect of either the pension or terminal dues and payment of any other sums of money found to be due to the plaintiff from either the 2nd or 3rd defendant after taking accounts.
 - e) The costs of this suit and interest



- f) Any other just relief the Court may deem just to grant.
2. The respondents filed an amended statement of defence amended on August 7, 2009 through Oraro & Company Advocates. The respondents prayed that the suit be dismissed with costs.
3. Subsequently the respondents filed a notice of preliminary objection dated August 10, 2020 and on the following grounds:
- a) That the Honourable Court lacks jurisdiction to hear and determine the claim as the jurisdiction to hear and determine retirement benefits disputes is not conferred on the Honourable Court whether under the Constitution of Kenya or by the Employment and Labour Relations Court Act 2011.
 - b) That the Retirement Benefits Act has provided an alternative dispute resolution mechanism by the provisions of section 46,47 and 48 of the said Act.
 - c) That section 15 of the Employment and Labour Relations Court Act, 2011 makes provision for alternative dispute resolution mechanisms.
 - d) That the claim herein is therefore bad in law, incurable defective and ought accordingly to be struck out with costs to the respondents.
4. The claimant's case was that he was an employee of the 3rd respondent and that the 1st respondent was the trustee/administrator and fund manager of the 2nd respondent in which fund he was a member.
5. On or about August 5, 1998 his service at the 3rd respondent were terminated following a national strike by bank employees after which his terminal dues were partly paid by the 3rd respondent following an award made by the Industrial Court of Kenya Industrial Cause No. 77 of 1999 where the Court directed that a factor of twelve and a half of the accumulated pension be applied in determining his dues, but his pension benefit was deferred until the time when he could attain the mandatory retirement age of 55 years which age he attained on April 19, 2005.
6. Upon attaining the retirement age, by a letter dated 11.04.2005 the claimant notified the 2nd respondent of his attainment of the retirement age and requested the 2nd respondent to pay his pension and by a letter dated May 9, 2005 the 1st respondent confirmed that he was entitled to receive his pension and proposed to settle the same in the following manner;
- i. Receive a quarter of his annual pension as cash (Kshs.626,059) and the balance payable to him as monthly pension payment. The monthly pension payment in his case would be Kshs.14,100
 - ii. Receive a higher monthly pension payment of Kshs.18,800 and no cash.
7. The claimant sought clarification from the 1st respondent regarding the proposal but the 1st respondent declined to make the clarification sought and instead refused to settle his pension all together alleging that he was paid his dues in October 2002 and yet his pension was only due and payable only upon attainment of the mandatory retirement age of 55 years.
8. The claimant maintains that he has never been paid his pension by the respondents as alleged and the respondents are deliberately confusing the terminal dues partly paid by the 3rd respondent for wrongful termination pursuant to the directive of the Industrial Court of Kenya at Nairobi under industrial cause no 77 of 1999 which dues were different and distinct from the pension fund.



9. On the part of the respondents, it is stated that upon computing the entitlements of the claimant, the total sum was Kshs.1,666,18.00. An amount of Kshs.1,400,000/= out of his entitlement under the pension scheme was applied to liquidate his outstanding staff loan with the bank.
10. The sum of Kshs.266,148 was credited into the claimants current account no. 01007-66617-00 being the balance of his entitlement as a result of his dismissal and in full and final payment of all his dues.
11. By a letter dated October 13, 2008 from the Retirement Benefits Authority addressed to M/s Onyoni Opini & Co Advocates confirmed that according to the information availed to it by the sponsor of the bank, the claimant was paid the sum of Kshs.1,666,148 in respect of his retirement benefits and as such the authority considered the matter as finalized and they were proceeding to close their relevant file.
12. It is the respondents' case is that since the claimant is seeking orders of taking accounts, a declaration by the respondents on the mode of calculation of his pension, benefits and an order for subsequent payment of his pension benefits, then the proper forum to adjudicate such a dispute is the tribunal established under the rules made pursuant to the provisions of the Retirement Benefits Act and not in the Honourable Court.
13. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
14. The 1st issue for determination is whether the Court lacks jurisdiction because there is prescribed procedure under the Retirement Benefits Act for a tribunal to resolve the claimant's claim for pension herein. It has been submitted for the claimant that after the decision by the then Industrial Court in Cause 77 of 1999, he authorised the employer by a letter dated 17.10.2002 to credit a sum of Kshs.1,400,000.00 out of the unpaid dues to him to settle his outstanding loan. The employer, the bank, went ahead to deposit the remainder of Kshs.266,148.00 to the claimant's bank account. It is submitted that the claimant never discussed the issue of pension fund managers to pay his pension at the time is purported he was paid. By that submission, it is clearer to the Court that the issues between the parties arising from cause 77 of 1999 were settled and the pending issue is one of the pension claims. The payments already made per the claimant's account show that he was paid in 2002 before he attained 55 years of age and could not therefore have been about his pension claims. Further, it is submitted for the claimant that by the 3rd respondent's letter dated March 7, 2000, it was indicated that the claimant's pension benefits were to be paid to him as from April 19, 2005 when he would have attained the retirement age of 55 years and the pension remains unpaid. Further the award in cause 77 of 1999 had not been inclusive pension benefits.
15. If that finding be the position, then it appears that the preliminary objection should succeed. It is submitted for the respondents that section 46(1) of the *Retirement Benefits Act* provides thus,

“Any member of a scheme who is dissatisfied with a decision of a manager, administrator, custodian, or trustee of the scheme may request, in writing, that such decision to 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 Act under which the scheme is established.”

Further, section 46(2) provides for appeal to the Tribunal within 30 days of receipt of the Chief Executive Officer's decision. As submitted for the respondents, the claimant is dissatisfied with the decision of the trustees to pay him his pension and the matters should be decided by the relevant authorities under the *Retirement Benefits Authority Act*. The Court finds accordingly and the suit is



liable to dismissal. The Court has considered the history of the dispute spanning over 20 years and each party to bear own costs.

In conclusion the suit is hereby dismissed with orders each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH DECEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

