



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1001 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

OBADIA MUITSYA KITONYI.....CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

AND

DIRECTOR OF PENSIONS DEPARTMENT.....1ST GARNISHEE

EQUITY BANK LIMITED.....2ND GARNISHEE

RULING

The claimant herein filed suit against the Respondent seeking the following remedies: -

- a. *The declaration that the Plaintiff was wrongfully dismissed while the matter was pending before the court.*
- b. *The Plaintiff to be reinstated to his previous position with effect from the 27th January 2000 with full benefits.*
- c. *The Plaintiff to be reinstated to his monthly salary of Kshs.14,210/- with effect from the 27th day of January 2000 together with house allowance, medical allowance, leave allowance and other benefits as stipulated under the Civil Service Regulation.*
- d. *The Plaintiff to be admitted to his retirement benefits and the same to be calculated from the date he attained retirement as provided in the Civil Service Regulation.*
- e. *The Plaintiff to be paid his full pension retirement benefits and thereafter to continue earning a monthly pension as provided for in the Civil Service Regulation.*
- f. *The Plaintiff to be paid general damages.*
- g. *Costs of this suit.*
- h. *Interest on (b) (c) (d) (e) and (g) at court rate.*
- i. *Any other benefit which this Court may deem fit to grant.*

After hearing the parties, judgment was delivered, in which orders were made as follow: -

- (a) Calculate and pay the Plaintiff, lump sum pension due and owing to the Plaintiff from the date he attained the retirement age of fifty five (55) years.**
- (b) Continue to pay the Plaintiff monthly pension in terms of the applicable law and regulations.**

(c) Pay interest on the lump sum pension awarded in (a) above from the date of filing suit till payment in full.

(d) The Defendant to pay costs of the suit.

The Pensions Office computed and paid to the claimant the sum of Kshs.1,586,112.30 as evidenced by voucher dated 13th August 2020.

What is now outstanding is payment of interest which the Claimant has calculated to be Kshs.5,611,712 and costs.

The other issue is who should pay interest and costs. This has become an issue based on the Claimant's application by way of Chamber Summons dated 2nd September 2020 made under Order 23 Rules 1(1) and 10 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and Section 45 of the Advocates Act in which the Claimant prays for the following orders; -

1. *Spent.*

2. *That a garnishee order nisi do issue against the Director of Pensions, National Treasury directing that all monies belonging to the Claimant in Pension No. 332583 in the name of OBADIAH MUTISYA KITONYI who is a retired civil servant from the Government of Kenya on age ground after serving as a Senior Executive Officer in the Ministry of Lands and Physical Planning as per the letter dated 11th day of March, 2020 confirming that the Ministry of Lands and Physical Planning forwarded his entire file to the Director of Pensions for calculation and payment of retirement benefits.*

3. *That a garnishee order nisi do issue against Equity Bank Limited Tala Branch in the sum held of Kenya Shillings One Million Five Hundred and Eighty Six Thousand One Hundred and Twelve and Thirty Cents (Kshs.1,586,112.30) in the name of Claimant Obadiah Mutisya Kitonyi pending the hearing and determination of this application.*

4. *That this Court be pleased to order the Director of the Pensions Department to deduct 25% of the total amount payable as pension together with the arrears to the Claimant before releasing the final dues to the Claimants account.*

5. *That this Court be pleased to order the Director of pensions to deduct the 25% of the total amount payable to the Claimant and remit the same to the firm of Ratemo Oira & Company Advocates for the Claimant in Account No. 1102194387 situated at Kenya Commercial Bank Limited, Moi Avenue Branch, Nairobi as per the agreement made between the Claimant and the firm of Ratemo Oira & Company Advocates.*

6. *That this Court be pleased to order the Director of Pensions Department and the Principal Secretary Ministry of lands and Physical Planning to jointly pay the Claimant the total amount of the pension together with arrears and salary arrears with interest at a court rate with effect from 2007 up to date as per the judgment.*

7. *That pending inter-party hearing or further hearing of this application the garnishee order nisi be made absolute and the monies attached at the Pensions Department be released to the Claimant less 25% which should be paid to the firm of Ratemo Oira & Company Advocates.*

8. *That the costs of this application be awarded to the Claimant.*

The Director of Pensions has sworn a replying affidavit and a further affidavit where he states that by virtue of Section 21(4) of the Government Proceedings Act no Garnishee proceedings are enforceable against the Government. Further that the Garnishee proceedings have been overtaken by events following the payment of the decretal sum. Further that there are no funds in the property to the Director of Pensions payable to the Claimant.

The Director of Pensions further deposes that under Section 13 of the Pensions Act pension, gratuity or other allowance granted under the Act is not assignable or transferable except in special circumstances as set out in the Act.

With respect to the prayer for interest and costs, the Director of Pension deposes that there is no certificate of costs against the Government against which the Director of Pensions can advise the Government on the outstanding costs and interest. It is further his averment that the Director of Pensions and Ministry of National Treasury and Planning is not the judgment debtor. Judgment was issued against the Ministry of Lands and Physical Planning. That the Director of Pensions is only acting on directions from the Ministry of Lands and Physical Planning.

Determination

The Claimant does not contest having received the sum of Kshs.1,586,112.30. What the Claimant seeks is interest on the lump sum pension as ordered by the Court, and costs.

In view of the fact that the judgment did not specify the amount payable, the same ought to be determined by the court and a certificate issued to that effect. That the taxation in this matter has also not been issued

The application filed by the Claimant is in the nature of an application for execution, which in my opinion is premature, as the Government cannot pay an amount that has not been ascertained by the Court.

I also agreed with the Director of Pensions that the application directed at it is, besides being premature, directed at the wrong person, as it is not a party to the suit nor was any order made against it in the judgment. That it only made payment of pensions based on its obligations

under the Pensions Act, upon being advised to do so by the Respondent being the Ministry of Lands and Physical Planning.

The prayers sought in the application are further not tenable based on the provisions of Section 13 of the Pensions Act, which provides that: -

13. Pensions, etc., not assignable

A pension, gratuity or other allowance granted under this Act shall not be assignable or transferable except for the purposes of satisfying—

(a) a debt due to the Government; or

(b) an order of any court for the payment of periodical sums of money towards the maintenance of the wife, or former wife, or minor child, of the officer to whom the pension, gratuity or other allowance has been granted, and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatever except a debt due to the Government.

It is for the foregoing reasons that I find the claimant's application dated 14th August 2020 to be not only premature, but also directed at the wrong party. The same is accordingly dismissed with no orders for costs.

The claimant is directed to proceed with the execution process in the manner provided in the law.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 30TH DAY OF APRIL 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE