



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

MISC APPLICATION NO. 17 OF 2020

BARRACK DENNIS OKWIRI.....APPLICANT

VERSUS

HON ATTORNEY GENERAL.....1ST RESPONDENT

DIRECTOR OF PENSIONS.....2ND RESPONDENT

RULING

1. On 26 November 2020, the Court granted leave to Barrack Dennis Okwiri (the applicant) to commence judicial review proceedings.
2. As a result, on 10 December 2021, the applicant filed a Motion seeking orders:
 - i. THAT the Honourable Court be pleased to grant a judicial review order of mandamus to remove into this Honourable Court and compel the 1st and 2nd Respondents to comply with the findings and determination of the Ombudsman dated 12.10.2016 in file Ref PCSC/PEN/000/3/080 FN between Barrack Dennis Okwiri v Ministry of Agriculture, Livestock and Fisheries and in particular that the applicant should be paid his pension dues, same as computed from his date of retirement less the compassion gratuity already paid and an order to the 1st Respondent directing that it prepares a revised claim for submission to the 2nd Respondent for immediate processing.
 - ii. THAT the costs of and incidental to the application be provided for.
 - iii. THAT such further and other reliefs that this Honourable Court may deem just and expedient to grant.
3. The Respondents caused to be filed a replying affidavit sworn by the Secretary/Director of Pensions on 4 May 2021, and pursuant to further Court orders, the applicant filed his submissions on 26 May 2021 (should have been filed and served by 5 June 2021).
4. The Respondents submissions were not on file by 5 July 2021 as directed.
5. The Court has considered the Motion, affidavits and submissions.
6. The applicant retired from the Ministry of Agriculture through a voluntary early retirement scheme on 1 October 1995. He was a Junior Technical Assistant job group C.
7. Upon retirement, the applicant applied for but was informed that he did not qualify for a pension because he was not serving on *permanent and pensionable* terms.
8. The applicant appealed to the Public Complaints Standing Committee, which made a finding that the applicant had provided sufficient records to demonstrate he should be considered to have been on *permanent and pensionable terms* and thus eligible to pension.
9. Amongst the primary records relied on by the Committee was a History Sheet dated 1 March 1964.
10. The Respondents rebuttal was simple. It was that the applicant was engaged on non-pensionable terms and was therefore not eligible for pension.

11. As a non-pensionable employee, the Respondents stated, the applicant was paid both compassionate gratuity and terminal dues on early retirement.
12. The Pensions Act sets out the eligibility for pension, and these include that one held a *pensionable office*.
13. It was incumbent upon the applicant to prove on the first instance that he held a pensionable office.
14. Apart from the History Sheet which did not have all the requisite signatures, the applicant did not provide any other primary record such as a confirmation letter or letter admitting him to a pensionable office (the Court also notes that the applicant had indicated in Part I of the application for early retirement that his *Current Terms of Service* was *Temporary*).
15. In the circumstances, the Court declines the invitation by the applicant to grant him the judicial review orders sought.
16. The Motion is dismissed with no order on costs.
17. The Court regrets that it could not deliver the Ruling on 27 October 2021 due to other official engagements.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 25TH DAY OF NOVEMBER 2021

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicant Nyang'acha & Associates Advocates

For Respondent Janet Lang'at, Deputy Chief Litigation Counsel

Court Assistant Chrispo Aura