



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

PETITION NO. 4 OF 2019

IN THE MATTER OF ARTICLE 21 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL FREEDOMS UNDER ARTICLES 27, 28, 40, 47 AND 48 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE

AND

IN THE MATTER OF RULE THE CIVIL PROCEDURE ACT SECTION 18 (POWER OF THE HIGH COURT TO WITHDRAW AND TRANSFER CASE INSTITUTED IN THE SUBORDINATE COURT)

BETWEEN

PETER KIBOCHA MAINA.....PETITIONER

VERSUS

RETIREMENT BENEFITS AUTHORITY.....1ST RESPONDENT

BARCLAYS BANK OF KENYA LIMITED

STAFF PENSION.....2ND RESPONDENT

BARCLAYS BANK OF KENYA LIMITED.....3RD RESPONDENT

RULING

1. The Petitioner seeks various reliefs against the Respondents and the 1st, 2nd and 3rd Respondents (hereafter referred to as the Respondents). The Petitioner was an employee of the 3rd Respondent and by virtue of the employment a member of the 2nd Respondent as a beneficiary of the pension funds. The 1st Respondent was sued as the regulatory body in respect of whose mandate it was to make decisions on matters relating to retirement benefits, investigate and decide complaints and disputes relating to the way retirement benefits schemes are run. The Petitioner asserts that he was injured in a road traffic accident and as a result of the incapacitation entitled to receive retirement benefits. He accuses the 2nd and 3rd Respondents of erroneous computations leading to loss of benefits on the factor of age for commutation of pension. He thus laid claim to monies allegedly retained to the 1st Respondent's custody due to the erroneous calculations. He asserts the 3rd Respondent as a sponsor of the 2nd Respondent stands to benefit from the member's reduced annual payments that would be achieved by reduction of the base pay or the reduction of commutation discounting period. During the pendency of the matter, the 1st Respondent was reconstituted and it formed a basis for the Petitioner's attempt to stay the proceedings before the court as the 1st Respondent was now in a position to hear the dispute between the Respondents as provided for under the law.

2. Granted that the Chief Justice's Practice Directions to Mitigate COVID-19 dated 16th March 2020 and the Kenya Gazette Notice 2357 of

20th March 2020 issued in Vol. CXXII No. 50 and in taking cognisance of the reduced access to justice in line with the measures and further taking into account the detail in the Practice Directions of the Chief Justice and the statement he made in the NCAJ address to the Nation of Kenya when the Judiciary and the other stakeholders in the administration of justice agreed to scale down operations to mitigate the effects of COVID-19, it would be in the interests of justice to permit the deferring of the decision of this court as the 1st Respondent is better placed to deal with the matter as at present. Given there is a forum where the dispute can be resolved and in keeping with the decision in various case law relating to the ventilation of disputes in the alternative fora instead of court as in this case, the Petition is hereby stayed pending resolution of the dispute before the Retirement Benefits Tribunal. The parties will bear their own costs for the Petition as at this point.

3. This decision was rendered online in keeping with the express consent by parties to the waiver of Order 21 Rule 1 and 3 of the Civil Procedure Rules and in line with the Chief Justice's Practice Directions to Mitigate COVID-19 dated 16th March 2020 and the Kenya Gazette Notice 2357 of 20th March 2020 issued in Vol. CXXII No. 50.

It is so ordered.

Dated and delivered at Nyeri this 30th day of March 2020

Nzioki wa Makau

JUDGE