



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**MISC CIVIL APPLICATION NO. 152 OF 2019**

**TEACHERS SERVICE COMMISSION.....APPLICANT**

**v**

**JANE AWINO OWOKO.....RESPONDENT**

**(Being an application for leave to lodge Appeal out**

**of time and stay of proceedings in CMCC No. 202 of 2009)**

**Between**

**JANE AWINO OWOKO.....PLAINTIFF**

**v**

**TEACHERS SERVICE COMMISSION.....DEFENDANT**

**RULING**

1. Jane Awino Ooko, suing as personal representative of Benedict Owoko (deceased) sued the Teachers Service Commission (the Commission) before the Magistrates' Court alleging breach of contract/statute in that the applicant had failed/refused to pay the pension due to the deceased.

2. On 5 February 2019, the Commission filed a *Notice of Preliminary Objection* before the Magistrates' Court contending that the cause of action was time-barred by dint of section 4(1)(a) of the Limitation of Actions Act and section 3(2) of the Public Authorities Limitation Act.

3. In a Ruling delivered on 30 July 2019, the trial Magistrate found the preliminary objection misplaced and dismissed it. None of the parties attended the delivery of the Ruling.

4. On 22 November 2019, the Commission moved this Court seeking orders

1. ...

2. ...

3. **THAT** the Honourable Court be pleased to order stay of proceedings in Nairobi CMCC No. 202 of 2009 pending the hearing and determination of the intended Appeal.

4. **THAT** the Honourable Court be pleased to grant leave to the applicant to file an Appeal out of time against the Ruling of Hon. P.N. Gesora in Nairobi CMCC No. 202 of 2009 delivered on 30<sup>th</sup> July 2019.

5. ...

5. On 27 November 2019, this Court stayed the proceedings before the Magistrates Court pending hearing and determination of the application.

6. The Respondent was also directed to file/serve responses to the application ahead of *inter-partes* hearing on 23 January 2020.

7. The Respondent filed Grounds of Opposition on 10 December 2019, and the Court took arguments on the scheduled date.

#### **Leave to appeal out of time**

8. In seeking leave to appeal out of time, the Commission asserted without contradiction from the Respondent that the Ruling sought to be challenged was delivered without notice and that it only became aware of the Ruling on 7 November 2019.

9. Considering that the reason was not contradicted, the Court will grant leave to appeal out of time.

#### **Stay of proceedings**

10. The Ruling sought to be challenged by the Commission related to a jurisdictional question. The trial Magistrate declined to determine it allegedly because of an order from the High Court, and scheduled hearing of the main suit on 4 December 2019 (this Court stayed the hearing).

11. A Court cannot adjudicate where it has no jurisdiction and where the question of jurisdiction is raised, the Court is under an obligation to deal with it peremptorily.

12. It was therefore in error for the trial Court to decline to consider the question of limitation as it went to jurisdiction.

13. In order to save precious judicial time and not increase costs upon the parties, the Court will stay the proceedings before the trial Court in order to dispose of the intended Appeal.

14. The Court directs and orders as follows

(i) Leave to Appeal allowed.

(ii) Appeal and submissions to be filed and served on or before 3 July 2020.

(iii) Respondent to file her responses and submissions to the Appeal on or before 3 August 2020.

(iv) Mention on 3 August 2020 to confirm compliance and give date for judgment.

(v) Stay of proceedings granted pending Judgment.

15. Costs of the application to abide the Appeal.

**Delivered through Microsoft teams/email, dated and signed in Nairobi on this 5<sup>th</sup> day of June 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant Mr. Anyuor, Advocate Teachers Service Commission

For Respondent Mr. Odinga instructed by Wasuna & Co. Advocates

Court Assistant Judy Maina