



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 496 OF 2018

BETTY U CHAMBA.....CLAIMANT

VS

KENYA PORTS AUTHORITY.....1ST RESPONDENT

THE REGISTERED TRUSTEES OF THE KENYA

PORTS AUTHORITY PENSION SCHEME.....2ND RESPONDENT

RULING

1. On 30th October 2018, the Claimant filed a Notice of Motion under certificate of urgency seeking an order of injunction restraining the Respondents from interfering with her tenancy in Pension Scheme Block No. 91 Mbaraki, Mombasa Island.

2. The matter was placed before me on 30th October 2018 when I gave interim orders. The Respondents responded to the application on 7th December 2018 and contemporaneously raised a preliminary objection, challenging the jurisdiction of the Court to entertain the Claimant's claim. It is that objection that is the subject of this ruling.

3. In their objection by way of notice dated 5th December 2018, the Respondents state the following:

a) That the Claimant is no longer an employee of the 1st Respondent and therefore the claim does not fall within the purview of Section 12(1) of the Employment and Labour Relations Court Act and;

b) The jurisdiction of the Court to deal with a dispute between the Claimant and the 2nd Respondent is ousted in the first instance by Section 46 of the Retirement Benefits Act.

4. When Counsel for the parties appeared before me on 10th December 2018, they agreed to dispense with the preliminary objection by way of written submissions.

5. In their submissions filed on 18th December 2018, the Respondents make reference to the celebrated decision in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (Civil Appeal No 50 of 1989)* where the Court of Appeal stated thus:

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

6. There is no argument regarding the authority of "*Lillian S*". The only question before me is whether the objection taken by the Respondents falls within the definition of a preliminary objection as defined in the equally weighty decision in *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Limited (1969) EA 696* being one that raises a pure point of law with the assumption that all facts are correct as pleaded.

7. The Respondents argue that the suit herein does not fall within the purview of Section 12(1) of the Employment and Labour Relations Court Act. The Respondents rely on the ground that the Claimant's employment having terminated upon her retirement on 27th July 2018, the relationship between her and the 1st Respondent is that of former employee/employer.

8. With tremendous respect, I think this is a misapprehension of the jurisdiction of this Court as far as employment matters are concerned. If one were to push the Respondents' argument to its logical conclusion it would mean that the jurisdiction of the Court is restricted to situations where the employment relationship subsists. The Court struggled to find a basis for such a proposition since majority of employment disputes emerge after termination of employment by whatever means.

9. The second limb of the objection is based on the doctrine of exhaustion. In this regard, the Respondents submit that the matter herein relates to a dispute between a pensioner and her pension scheme which is governed by the Retirement Benefits Act. Citing Section 46(1) of the Act, the Respondents state that this Court is deprived of jurisdiction to hear and determine pension related matters in the first instance.

10. A reading of the pleadings filed by the parties does not, in my view, disclose a dispute between a pensioner and a pension scheme. In other words, the decision which is the subject matter of the dispute now before the Court does not relate to the management of the scheme. Rather, it has to do with a tenancy created by the 1st Respondent and later assigned to the 2nd Respondent.

11. It seems to me therefore that this is not a matter contemplated by the exhaustion provision under Section 46(1) of the Retirement Benefits Act. On the contrary, this is purely a tenancy issue which has nothing to do with the relationship between the Claimant as a pensioner and the 2nd Respondent as a pension scheme.

12. To this extent, I am persuaded by the decision by my brother **Rika J** in **Abdullahi Ali Mohammed v Kenya Ports Authority & another [2016] eKLR** where he held that housing is not a subject governed by Pension Scheme Rules and Regulations.

13. Overall, the Court finds the Preliminary Objection raised by the Respondents ill-conceived and proceeds to overrule it with costs to the Claimant.

14. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 21ST DAY OF FEBRUARY 2019

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JUDGE

Appearance:

Mr. Chamwada for the Claimant

Mr. Cheruiyot for the Respondent