



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO. 97 OF 2013

**DAMARIS AUKO OGADA (suing on behalf of the estate of Gordon Ogada Ochieng (Deceased)
.....CLAIMANT**

VERSUS

KENYA RAILWAYS STAFF RETIREMENT

BENEFITS SCHEME1ST RESPONDENT

KENYA RAILWAYS CORPORATION.....2ND RESPONDENT

RULING

1. By a motion dated 29th November, 2016, the 1st respondent sought orders that the suit against it be dismissed as it did not disclose any reasonable cause of action against it. The application was based on the grounds among others that vide her amended statement of claim filed on 26th May, 2016 the claimant averred that the deceased at the time of his retirement was only entitled to Kshs 10,000/= as transport fees to his home, computation factor and gratuity payment.
2. The advocate opposed the application and filed a replying affidavit in which he deponed on the main that; These were the only reliefs which the claimant sought from her amended statement of claim in addition to costs. Further, that the claimant through her submissions dated 27th July, 2016 admitted that the deceased was indeed not pensionable. The application was further based on the grounds that the court by its ruling delivered on 5th February, 2016 confirmed that indeed the claimant had not intended to claim for pension dues but payment of gratuity, housing and transport allowances payable upon retirement.
3. The applicant further contended that at the time of retirement the 1st respondent had not been incorporated hence he was not a pensioner of the 1st respondent. The 1st respondent also averred that it is only mandated to cater for pension of pensionable staff of the 2nd Respondent and none other.
4. The claimant opposed the application and filed a replying affidavit in which she deponed on the main that the applicant was the landlord to previous known as No. VI 7-II in Makongeni where she resides hence a necessary party to the suit. She further stated that the 2nd respondent operated an unfunded pension plan governed by the Kenya Railways Corporation Act and that the establishment of the applicant was accompanied with a concession to transfer the assets previously held by the 2nd respondent. It was therefore vital that the presence of the application was required at the trial of the suit.
5. The court would only retain parties who are necessary for the determination of the dispute before it. A party who has no interest or is not concerned at all with the dispute before the court would not be retained.
6. The claimant herein in her amended memorandum of claim prays for Kshs 10,000/= as transport fees, computation and payment of housing factor and gratuity payment. These claims in their nature are terminal benefits payment by an employer to an employee.
7. Pension is usually an independent issue run by an independent pension scheme appointed by the employer. The fact that the 1st respondent is the landlord to premises occupied by the claimant does not by itself make it a necessary party in this suit. In any event the issue of rent and the premises are not part of the present proceedings.
8. The court in the circumstances finds the 1st respondent’s application merited and hereby allows the same as prayed.

9. It is so ordered.

Dated at Nairobi this 2nd day of March 2018

Abuodha J. N.

Judge

Delivered at Nairobi this 2nd day of March 2018

Abuodha J. N.

Judge

In the presence of:-

..... for the claimant

..... for the Respondent