



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 97 OF 2013

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

VERSUS

KENYA RAILWAYS STAFF RETIREMENT

BENEFITS SCHEME.....RESPONDENT

RULING

1. By an application dated 5th June, 2015 the applicant/claimant seeks review of the orders made by Justice Maureen Onyango herein when she declined jurisdiction on the basis that the Court lacked jurisdiction on the basis that non-payment of retirement benefits is matter for the Retirement Benefits Authority.
2. In support of this application the applicant states as follows:-
 - a. It has now come to the Applicant's attention that the claim before this Honourable Court was not properly drafted and that the Applicant did not intend to claim for pension dues of her deceased husband but intended to claim payment of gratuity, housing and transport allowance payable upon retirement.
 - b. The Applicant's deceased husband who was an employee of Kenya Railways Corporation under group RC was non-pensionable and was entitled to gratuity payment, housing factor and transport allowance upon his retirement on 31/12/2003 which was never finalized until his demise on 24/6/2008.
 - c. The orders made on 2/9/2014 regarding jurisdiction of this Honourable Court were made without knowledge that the deceased employee was not pensionable and thus the claim before this Honourable court was erroneous.
 - d. The Applicant herein aggrieved by this Honourable Court's orders issued on 2nd September, 2013.
 - e. This Honourable Court has jurisdiction to hear the claim before the Court.
 - f. As such it is necessary that the leave of this Court be sought in order to amend the claim.

3. I have considered the application and the orders sought in the main of which is to amend the claim herein to fully reflect the issue in dispute and I am of the view that the orders sought if granted would enable the applicant to place before the court the real issue in controversy between the parties and would not occasion the respondent any prejudice if granted.

4. The Court therefore grants the prayers sought in the chamber. Summons dated 5th June, 2015.

5. It is ordered.

Dated at Nairobi this 5th day of February 2016

Abuodha J. N.

Judge

Delivered this 5th day of February 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge