



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CIVIL CASE NO.1892 OF 2013

GEORGE MUSASIA EMBODOKA.....CLAIMANT

VERUS

KENYA RAILWAYS STAFF RETIREMENT BENEFIT SCHEME.....RESPONDENT

Mr. Wanjohi for Claimant/ Applicant

Ms. Githege for Respondent

RULING

The Claimant has sued, the Kenya Railways Staff Retirement Benefits Scheme, faulting the Respondents failure to answer nor attend to a claim for payment of commuted pension and lump sum due and owing to the claimant.

The Respondent only responded to the demand for payment once the matter was filed in court. The claimant was by a letter dated 29th November, 2012 retired from employment of Rift Valley Railways (K) Limited.

The Claimant states that upon termination of his employment, he was paid severance pay outlined in the memorandum of claim.

That he was entitled to commuted pension for the period of six (6) years served in the sum of Kshs.621,836.50 and lump sum payment of Kshs.555,129.40 which became due and owing as at November 2006 to December 2012.

The total claim made is Kshs.1,176,965/= plus interest thereof.

In the Respondent's Memorandum of Response to the claim, it admits partly the contents of paragraphs 7, 8 and 9 of the memorandum of claim and in particular it admits owing the Claimant retirement pension lump sum computed to Kshs.555,129.40.

The Respondent denies the claim for unpaid pension for six years between November 2006 and December 2012 in the sum of Kshs.621,836.50.

The Respondent further denies the jurisdiction of this court to hear and determine this matter on the following basis:-

- a. there is no employee and employer relationship between the Claimant and the Respondent and
- b. The Kenya Railways Staff Retirement Benefits Scheme is governed by the **Retirement Benefits Act, Cap 197 of 1997** under which the Retirement Benefits Authority is established in **Section 3(1)**. The claimant should therefore lodge a claim with the Chief Executive of the Retirement Benefits Authority and in particular under **Section 46(1)** which provides:

“Any member of a scheme who is dissatisfied with a decision of the Manager, administrator, custodian or trustee of the scheme may request in writing that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the retirement scheme rules or the Act under which the scheme is established.”

The Respondent prays that this matter be dismissed for lack of jurisdiction. However, it is the court’s view that a dispute regarding payment of terminal dues including pension between an employee and a scheme established by an employer is a matter related to employment within the meaning of **Article 162(2)** of the **Constitution of Kenya 2010** as read with **Section 12(1)** of the **Industrial Court Act, 2011**. This court therefore has jurisdiction over this dispute.

Whereas the Retirement Benefits Act, provides powers to the Authority and Tribunal to adjudicate and determine disputes emanating from payment of pensions, the Act cannot oust the jurisdiction of the Industrial Court as presently constituted to hear such disputes filed directly to the court by members of various pension schemes.

It is however in the interest of justice and economic use of the courts time to allow the Tribunal established for the purpose of adjudicating such dispute to exercise it’s authority as a tribunal of first instance and this court to only act as an appeals court for those who are dissatisfied with the decisions of the Tribunal.

The court notes that appropriate amendment to limit the role of the court to only hearing of appeals from the Tribunal would be a step in the right direction.

The Court having established that part of the claim is admitted, proceeds to grant the Claimant an award in terms of the said admission in the sum of Kshs.555,129.40 being the lump sum payment claimed under paragraph 9 of the statement of claim and admitted under paragraph 5 of the statement of response.

The balance of the claim for the unpaid pension for six (6) years from November, 2006 to December 2012 in the sum of Kshs.621,836.50 is referred to the Retirement Benefits Authority in terms of **Section 15(1)** of the **Industrial Court Act, 2011** and **Article 159(2) (c)** of the Constitution of Kenya 2010 for Alternative Dispute Resolution within three (3) months from the date of this ruling.

The Award by the Tribunal to be filed with the court thereafter to ensure closure of this suit.

Dated and Delivered at Nairobi this 11th day of August, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE

Read and delivered in open court by this 11th day of August, 2014