National Industrial Court declares limiting retirees above 50 years to 25% lump sum payment unlawful

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The National Industrial Court of Nigeria (NICN or "the Court"), Abuja Judicial Division, recently delivered judgement in the case between *Mr. Maroof Abdul Giwa ("the Claimant") and ARM Pension Managers (PFA) Ltd. (ARM Pensions) & National Pension Commission (PenCom) ("the Defendants")* on the legality of the basis for computing the lump sum payable to the Claimant by ARM Pension in line with the guidelines issued by PenCom.

The crux of the matter was whether the 25% benchmark for lump sum withdrawal provided in the Pension Reform Act (PRA or "the Act") applies to a policyholder who retires mandatorily at an age above 50 years.

Facts of the case

The Claimant retired from public service on 24 December 2017 at the age of 60 years and applied for the withdrawal of a lump sum representing 50% or 75% from his retirement savings account (RSA) domiciled with ARM Pensions, in line with the provisions of the PRA. However, ARM Pensions computed the lump sum at 25% which the Claimant refused to accept. Consequently, the Claimant filed a lawsuit at the NICN seeking a declaration that the offer of 25% of the RSA balance was contrary to the express provisions of Section 7(1) of the Act and, therefore, unlawful, null and void.

Issues for determination

Based on the prayers of the parties, the Court formulated the following issues for determination:

a. whether or not the Claimant is entitled to a lump sum of his accrued pension at the time of retirement at 60 years; and

b. whether or not the Defendants can prevent the Claimant from accessing his pension.

NICN's decision

After considering the arguments of both parties, the NICN ruled in favour of the Claimant on the following grounds:

- Based on the provisions of Section 7(1) of the Act, the Claimant is entitled to a lump sum withdrawal, provided that the balance after the withdrawal will be sufficient to procure a life annuity for him;
- Section 7(2) of the Act, which stipulates a 25% lump sum payment, applies only to a person who voluntarily retires, disengages, or is disengaged from employment by age 50 or below;
- The Act did not specify any percentage for the lump sum withdrawal for any claimant who retires mandatorily at an age above 50 years as is the case of the Claimant in the suit. Further, the only condition provided in the Act for retirees above 50 years is that the amount left after the withdrawal of the lump sum must be sufficient to procure life annuity for the retiree;
- The life expectancy of a retiree should be considered in determining the lump sum and annuity due to the retiree. However, there is no basis for the life expectancy of the Claimant used by ARM Pension in its computation as it differs significantly from the World Health Organization estimate of 55 years for a Nigerian male, which has been surpassed by the Claimant.

Comments

The judgement of the Court aligns with the provisions of the Constitution of the Federal Republic of Nigeria which states that any benefit (pension or gratuity) due to a person should not be *"altered or withheld to his disadvantage except to such extent as is permissible under any law…"* This provides the basis for the different entitlements for various categories of retirees contemplated in the PRA.

One of the main objectives of the Act is to ensure that improvident individuals save in order to cater for their livelihood during old age. Ordinarily, a policyholder is not entitled to any withdrawal from the RSA before retirement or attaining the age of 50 years, whichever is later. Further, where a lump sum is withdrawn upon retirement, the Act provides that the remainder should be sufficient to cover a life-long periodic payment to the retiree. While Section 7(2) provides that an employee who retires voluntarily, or due to sickness/disability or loss of employment by age 50 years or below, and is unable to secure another employment within four months, can make a maximum 25% lump sum withdrawal from his RSA, Section 7(1) of the Act is silent on the lump sum percentage for mandatory retirement. Consequently, a retiree above 50 years of age can determine the lump sum percentage provided that the amount remaining after the withdrawal is sufficient to procure him a lifetime annuity.

The exclusion of retirees above 50 years from the provisions of Section 7(2) is not an error and should not be construed as one. As noted in the judgement, one cardinal principle in the construction of a statute is that, *"where the words of a statue are clear or unambiguous, those words shall be so construed as to give effect to their ordinary or literal meaning and enforced accordingly".* Further, *the expressio unius est exclusio alterius* rule of interpretation of statute requires that *"where a statute mentions specific things or persons, the intention is that those not mentioned are not intended to be included".* Therefore, employees who retire mandatorily after 50 years of age should be able to determine the percentage of lump sum withdrawal from their RSAs, provided that the balance will be sufficient to procure them a life annuity or withdrawals.

While PenCom has the statutory power to issue guidelines for the administration of pension matters in Nigeria, such guidelines must be consistent with the provisions of the PRA. Hence, guidelines and other administrative documents, such as the PenCom Computation Template, should not be used in such a manner as to amend, replace or vary an Act of the National Assembly.

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