



**County Government of Kakamega v Cabinet Secretary  
National Treasury & 2 others (Judicial Review 57 of 2020)  
[2024] KEHC 14700 (KLR) (Judicial Review) (25 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 14700 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW 57 OF 2020  
JM CHIGITI, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**COUNTY GOVERNMENT OF KAKAMEGA ..... PETITIONER**

**AND**

**THE CABINET SECRETARY NATIONAL TREASURY ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE LOCAL AUTHORITIES PROVIDENT FUND BOARD . 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Applicant's Case;**

1. It is the applicant's case that on 21st December 2018, the 1st Respondent, acting in complete disregard of the Constitutional provisions in respect of Devolution, devolved functions, inclusiveness, Public Participation, principles of County Public service, Good Governance and the Petitioner's legitimate expectations, illegally appointed and/or constituted a Board of Directors for the Local Authorities Provident Fund, by causing the same to be published in the Kenya Gazette under Kenya Gazette Notice No. 13232 on the basis of the provisions of Section 5(1) (a) of the [Local Authorities Provident Fund Act](#), Cap 272 laws of Kenya, which Act is defined as an Act of Parliament to establish a Provident Fund for certain employees of local authorities; to provide for contributions to the Fund by such employees and authorities and for the administration of the Fund by a Local Authorities Provident Fund Board (hereinafter, 'Lapfund').
2. The Employees of the Petitioner are members of both Lapfund and the Local Authorities Provident Trust ('Laptrust'), among others, and the Petitioner as employer and sponsor is the largest contributor



- to the Pension Schemes in which County Governments' employees participate as members yet, despite this, the Petitioner was not consulted in forming and/or constituting the Board/3rd Respondent.
3. The Board has wide powers and duties under Section 6 of Chapter 272 of the Laws of Kenya (the Act) that include, inter alia, those:-
    - a. To supervise, control and manage all the assets of the Fund;
    - b. Subject to the directions of the Minister, to establish and operate in the name of the Board such bank accounts as it deems necessary or convenient.
    - c. From time to time to invest the moneys of the Fund which are not for the time being required for any of the purposes of this Act in securities or any form of property in which trustees are authorised by law to invest, or in such other manner as may be approved by the Minister:
    - d. Generally, to do any other act or perform any other duty necessary or expedient for the carrying out of the provisions of this Act.
  4. The Petitioner is apprehensive that the Respondent and the Respondent Board, purportedly appointed by the Respondent, will continue to violate the provisions of *the Constitution* by, inter alia, requiring contributions from the Petitioner, its employees, managing those contributions, their assets, making far reaching policy issues, without any regard to the letter and spirit behind Devolution and devolved functions; as well as without any say by the Petitioner or its employees due to total lack of representation on the Board, contrary to the intention of the law.
  5. It is its case that in any event, in light of the Provisions under the current Constitution on Devolution and devolved functions, the Provisions under the *Local Authorities Provident Fund Act* are ultra vires *the Constitution* and the entire Act should ipso facto be declared null and void or, in the alternative, to the extent of its inconsistency with *the constitution*.
  6. It is its case that indeed, there no longer exist local authorities and the Petitioner cannot be deemed to be equivalent to or successor of any such authority; having been established for the very first time under *the Constitution*.
  7. It is its case also that under Section 5(1) (a) of the *Local Authorities Provident Fund Act*, the Minister is given power to appoint 8 members to the Local Authorities Provident Fund Board, one to represent each province. A reading of this Section clearly shows that the Act was applicable and relevant in the former Constitution which established provinces. The former Constitution has since been repealed and the Provincial Administration abolished, furthermore even the purported appointments will not in any event be representative of the 47 Counties contrary to what the said statute intended.
  8. In so far as the Act purports to enable appointments under the former constitutional dispensation that has since been repealed, then such appointments are effectively unconstitutional, null and void ab initio not only because of the repeal but also due to want of compliance with the parent statute.
  9. It is its case that appointments were made without the participation or involvement of the relevant sponsors being counties who are the employers.
  10. The Petitioner is apprehensive that the 1st Respondent and the 3rd Respondent Board, purportedly appointed by the 1st Respondent, will continue to violate the provisions of *the Constitution* by, inter alia, requiring contributions from the Petitioner, its employees, managing those contributions, their assets, making far reaching policy issues, et al, without any regard to the letter and spirit behind Devolution and devolved functions; as well as without any say by the Petitioner or its employees due to total lack of representation on the Board, contrary to the intention of the law.



11. It is its case that provisions under the *Local Authorities Provident Fund Act* are ultra vires *the Constitution* and the entire Act should ipso facto be declared null and void or, in the alternative, to the extent of its inconsistency with *the constitution*.
12. Under Section 5(1) (a) of the *Local Authorities Provident Fund Act*, the Minister is given power to appoint 8 members to the Local Authorities Provident Fund Board, one to represent each province. A reading of this Section clearly shows that the Act was applicable and relevant in the former Constitution which established provinces. The former Constitution has since been repealed and the Provincial Administration abolished. Furthermore, even the purported appointments will not in any event be representative of the 47 Counties contrary to what the said statute intended.
13. It is therefore not possible to purport to act under a statutory provision that is incapable of being implemented/enforced.
14. Such appointments are effectively unconstitutional, null and void ab initio not only because of the repeal but also due to want of compliance with the parent statute.
15. The said appointments were in any event made without the participation or involvement of the relevant sponsors being counties who are the employers, members, the employees and important stakeholders namely the Retirement Benefits Authority (RBA), the latter having been mandated under Section 5 of the *Retirement Benefits Act* to regulate and supervise the management of Retirement Benefits Schemes for the benefit of members and sponsors.
16. The failure to allow public participation and ultimate representation on the Board by the sponsors, employees and relevant stakeholders, the Petitioner included, was in contravention of Article 10 of *the Constitution* and Section 5 of Cap. 272 that give public participation as a constitutional principle of Governance as well require representation respectively.
17. Pension in relation to County Government employees is an employment function which has been devolved to the counties concurrently with the setting up of County Governments and their respective County Public Service Boards. Article 235(1) of *the Constitution* states that:
  - a. Establishing and abolishing offices in its public service;
  - b. Appointing persons to hold or act in those offices, and confirming appointments; and
  - c. Exercising disciplinary control over and removing persons holding or acting in those offices.”
18. The *County Governments Act*, No. 17 of 2012 operationalizes Article 235(1) of *the Constitution* by establishing County Public Service Boards with the mandate to, on behalf of County Governments, establish and abolish public offices, to make appointments to public offices, to make recommendations and decide on remuneration, pensions and gratuities for county public service employees.
19. It is the applicant’s case that the current appointments by the 1st Respondent offend the above provisions as well as the requirements of the *Retirement Benefits Act* which stipulates that half of the Trustees of a defined Contribution Scheme must be nominated or appointed by the Sponsor(s) to represent employers in the scheme and half by members to represent employees. Neither the Petitioner as employer and sponsor nor its employees took part in the appointment of the said Board of Directors



- despite the immense powers that it (the Board) will have over the funds contributed by them (the Petitioner and its employees).
20. Article 6(182) of *the Constitution* divides Kenya into counties as specified under the First Schedule. The two levels of government are deemed to be distinct and inter-dependent and are required to conduct their mutual relations on the basis of consultation and co-operation.
  21. Article 174 states the objects of devolution as including the right of self-governance given to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them.
  22. Article 175 requires Counties to be based on democratic principles and the separation of powers. Article 235 obliges County Governments to create offices within its public service.
  23. It is its case that the 1st Respondent has interfered with these provisions in the following manner:-
    - a. Arbitrarily appointing a Board of Directors for the said fund without involving the County Governments and being fully aware that pension matters are a function of County Governments.
    - b. Appointing the Board in complete violation of the Constitutional principles of consultation and co-operation between the two levels of government.
    - c. Failing to respect the mandates of County Governments as dictated by *the Constitution* with respect to matters relating to employment and, by extension, pensions.
  24. Article 2(1), (4) and 3 of *the Constitution* protects the supremacy of *the Constitution* which includes the requirement of any law that is inconsistent with *the Constitution* to be deemed null and void. Article 10 sets out National Values and Principles of governance which should bind all state organs, state officers, public officers and include inclusiveness, equality, non-discrimination, good governance, integrity, transparency and accountability.

### **The Respondents case;**

25. The Respondents contend that the issue surrounding the composition of the Board is now moot given that the term of the 3rd Respondent's board, as appointed under Gazette Notice No. 13232, lapsed after the expiry of its 3-year term.
26. The incumbent board operates under a new term, as indicated in Kenya Gazette Notice No. 2871 and No. 3666.
27. Reliance is placed in the case of Daniel Kaminja & 3 others (suing as Westland Environmental Caretaker Group) v County Government of Nairobi [2019] eKLR, Mativo J stated that:

“ A matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact.”
28. With the lapse of the term and the operation of a new board, deprives the issue of practical significance.



29. It is their case that Section 132 of the County Government Act and Section 49 of the *Urban Areas and Cities Act* provide as follows –

“Subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government.

All officers of a board shall, on the commencement of this Act, subscribe to an existing pension scheme approved by the Retirement Benefits Authority.

Section 132 of the *County Governments Act* provides that; “Subject to the transitional provisions herein, all members and officers of staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government.”

30. Reliance is placed in the case of *Okoit & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated))* [2022] KEELRC13584 (KLR) Hon Maureen Onyango gave an interpretation of an “existing pension scheme” under Section 132 of the County Government Act as

“For these reasons it is my view that the reference to existing pension scheme in section 132 of the *County Governments Act* and Section 49 of the Urban and Cities Act must of necessity refer to both LAPFUND and LAPTRUST.”

31. Local Authorities Provident Fund Board is the alternative provided where the county Governments have not established their own pension schemes.

32. Additionally, LAPFUND is a registered occupational retirement benefit scheme under the *Retirement Benefits Act*, meaning its membership is determined by the employer, in this case, County Governments who have the discretion to subscribe to any pension scheme they so choose.

33. It is their case that from the foregoing that the allegation that the 3rd Respondent usurped the Petitioner’s rights and mandate of managing county Government Pension schemes is false.

34. The petitioner questions the constitutionality of section 5(1) of the *Local Authorities Provident Fund Act* Cap 272, Laws of Kenya, arguing that the provision is unconstitutional due to its linkage to the eight provinces established under the former constitution.

35. In determining the threshold for constitutionality of statutes the courts have to establish the purpose and effect of the impugned statute or section thereof as was stated in the case of *Katiba Institute & another v Attorney General & another* [2017] eKLR the Court cited with approval the case of *Plum & another v Attorney General* [2002] 2 E. A where the Constitutional Court of Uganda stated:

“To determine the constitutionality of a section of a statute or Act of Parliament, the court has to consider the purpose and effect of the impugned statute or section thereof. If its purpose does not infringe a right guaranteed by *the constitution*, the court has to go further and examine the effect of the implementation. If either its purpose or the effect of its implementation infringes a right guaranteed by *the constitution*, the impugned statute or section thereof shall be declared unconstitutional...”



36. Looking at the preamble of Cap 272, it states:
- “ An Act of Parliament to establish a provident fund for certain employees of local authorities; to provide for contributions to the fund by such employees and authorities and for the administration of the fund by a local Authorities Provident Fund Board; and formatters incidental thereto and connected therewith”
37. Applying the above threshold, it argues that the intent of the legislature and the statute itself is to ensure the interests of employees of local authorities spanning from the eight provinces were represented at the management level of the Fund.
38. With the advent of *the Constitution* of Kenya 2010, the former system of eight provinces gave way to the current administrative divisions, i.e., counties LAPFUND with the support of the relevant Government agencies (including the Commission on the Implementation of *the Constitution*, the Transition Authority and the Presidential Taskforce on Parastatal Reforms) aligned its operations to serve the employees of the County Government and associated organizations.
39. The use of Local Authority should therefore be interpreted from a purposive approach (in line with the tenets of *the constitution*).
40. In *Mbae v Speaker, County Assembly of Nakuru & another; others (Interested Party) (Constitutional Petition E004 of 2022)* [2022] KEHC 3313 (KLR) (7 July 2022) (Judgment) “A purposive interpretation on the other hand acknowledges that the meaning of language is imprecise, and measures words against contextual, schematic, and purposive considerations. Aharon Barak in the text, “Purposive Interpretation in Law” at page 11 explains that: “According to purposive interpretation, the purpose of a text is a normative concept. It is a legal construction that helps the interpreter understand a legal text. The author of the text created the text. The purpose of the text is not part of the text itself. The judge formulates the purpose based on information about the intention of the text’s author (subjective purpose) and the “intention” of the legal system (objective purpose).”
41. As such, the purposive interpretation avoids the shortcomings of the literal approach, namely absurd interpretations or those that appear to run counter to the purpose and functioning of the legislative regime.
42. On its Board composition, the Fund adopts its membership as provided under section 6 of the State Corporation Act, the *Retirement Benefits Act*, and its subsidiary legislation and the guidelines of the Mwongozo Code of Governance of State Corporations.
43. Additionally, upon consultation with the relevant trade unions or associations within the membership of the Fund representing the county government employees and associated institutions such as the Kenya County Government Workers Union and The Kenya National Union of Nurses, who nominate and/or endorse members to the LAPFUND board the interest of these county employees as envisaged in section 5(1) of the Act is safeguarded.
44. However, with the promulgation of *the Constitution*, the function of overseeing matters pertaining to consumer protection, standards for social security & professional pension plans were assigned to the National Government with standards to be regulated, supervised and overseen by the Retirement Benefits Authority.
45. An inter-agency technical committee comprising of the Council of Governors, National Government, representatives from the Retirement Benefits Authority, National Treasury (Pensions Department),



SRC, Transition Authority, Ministry of Devolution & Planning, CIC, County Public Service Boards, LAPTRUST and LAPFUND being the (existing pension schemes) was formed.

46. The technical committee recommended an umbrella pension scheme for all staff, members & officers of the County Government. Thus, the County Government Retirement Scheme Act, 2019 was enacted establishing the County Governments Retirement Scheme for employees in the service of county governments, to provide for retirement benefits of those employees and for connected purposes.
47. The County Government Retirement Scheme Act, 2019 was to repeal Cap 272 however the said Act was declared unconstitutional in *Okoti & 11 others v County Governments Retirement Scheme & 164 others; County Pension Fund Financial Services Limited & 8 others (Interested Parties) (Petition 213, 222 & 230 of 2019 & 36 of 2022 (Consolidated))* [2022] KEELRC13584 (KLR).
48. In its reasoning, the court in its ratio decidendi stated that the Act was in violation of Article 41 of *the Constitution* and would amount to unfair labour practices.
49. As such this court is then bound by Section 32 of the sixth schedule of *the constitution* which states that “The law applicable to pension in respect of holders of the constitutional offices under the former constitution shall be either the law that was in force at the date on which those benefits were granted or any other law in force at a date that is not less favorable to the person.”
50. In the case of *Centre for Rights Education And Awareness & Another V John Harun Mwau & 6 Others* [ 2012] EKLRC the court observed that in determining whether a statute is constitutional or not, the court must determine the object and purpose of the impugned Act and this can be discerned from the intention expressed in the Act itself.
51. It is imperative for the rights of employees under Article 41 to be protected by this court. The threshold for such an Act of parliament that intends to protect the interests of employees more so on pensions e.g The County Government Retirement Scheme Act, 2019 is that it must be favorable to the employee. Since the Act was declared unconstitutional, The LAPFUND Act should be allowed to continue to serve the interest of employees as it is much more favorable.
52. To the extent of the Constitutionality of the County Government Retirement Scheme Act, 2019, its preamble 2019 it reads as follows;

“An Act of Parliament to establish the County Governments Retirement Scheme for employees in the service of county governments, to provide for retirement benefits of those employees and for connected purposes”
53. It is their case that the Commencement date of the Act was on 7th October 2019 and Section 58 gives a transitional period of 5 years from the commencement date when the County Government Retirement Schemes *Act No.21 of 2019* is to take effect. As such, 5 years are to lapse on 7th October 2024.
54. The *Local Authorities Provident Fund Act* Cap 272 is still in effect until its expiry.
55. The 2010 Constitution distinguishes between the National and County Governments, emphasizing inter-dependence which implies that actions taken by the National Government should respect the functional and institutional integrity of the County Government and vice versa.
56. LAPFUND operates as a state parastatal under the ministerial responsibility of the National Treasury and Planning, as per Executive *Order No.1 of 2023*, its mandate involves managing a provident fund for



county government employees, necessitating mutual cooperation and consultation with the County Government.

57. It argues that the 1st Respondent's involvement extends solely to supervisory of LAPFUND operations in line with public parastatals. Crucially, LAPFUND does not derive funding from the exchequer.
58. The appointment of LAPFUND's board of trustees hinges on consultation with representatives/trade unions of county government employees, fostering a collaborative decision-making process.
59. The appointment process of LAPFUND board of directors is only subject to section 6 of the State Corporation Act, the *Retirement Benefits Act* and its subsidiary legislation, the guidelines of the Mwongozo Code of Governance of State Corporations and the recommendations of representatives from county government employees and affiliated institutions. This ensures the independence of both levels of government concerning the management of pension affairs for county government employees at LAPFUND.
60. It is its case that the issues surrounding the board's composition are moot, and the allegations of usurpation and unconstitutionality are unfounded.

### **Analysis And Determination**

61. Upon reviewing all the pleadings filed by parties, the rival submissions and the applicable law, the court finds the following to be the issues for determination:
  - i. Whether or not this court has jurisdiction.
  - ii. Whether the Applicant is entitled to the orders sought.
  - iii. Who should bear the cost of the suit.

### **Whether or not this court has jurisdiction;**

62. The term “jurisdiction” has emerged as a critical concept in litigation. Halsbury’s Laws of England (4<sup>th</sup> Ed.) Vol. 9 at page 350 thus defines “jurisdiction” as “... the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision.” John Beecroft Saunders in his treatise Words and Phrases Legally Defined Vol. 3, at page 113 reiterates the latter definition of the term ‘jurisdiction’ as follows:

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given”.



63. In Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 Others, Application No. 2 of 2011 [2012] eKLR, the Supreme Court pronounced itself on jurisdiction thus [paragraph 68]:

“(68) A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second Jurisdiction to entertain a matter before it, is not one of mere procedural. A Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, Commission (Applicant), Constitutional Application Number 2 of 2011. Where they cannot expand its jurisdiction must operate within the constitutional limits. It confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, court or tribunal by statute law.” (Emphasis provided) where it quoted with approval the oft-cited case of Owners of Motor Vessel 'Lillian S' v Caltex in Re the Matter of the Interim Independent Electoral Commission where the Court stated: -

”[29] Assumption of jurisdiction by Courts in Kenya is a subject regulated by *the Constitution*, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.” (underlining supplied)

[30] The Lillian 'S' case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by *the Constitution*.”

64. *The Constitution* of Kenya, 2010 has pronounced itself clearly on the jurisdictional competencies of various Courts of law in Kenya. The drafters of *the Constitution*, it appears, had the intention of clearly demarcating the jurisdictions of the said Courts so as to pre-empt lacunae and conflicts. Besides *the Constitution*, there are several statutes which demarcate the jurisdictions of various Courts and tribunals.

65. Section 12(1) of the *Employment and Labour Relations Court Act* further provides for the jurisdiction of the ELRC in the following terms:

(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the



provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including— (a) disputes relating to or arising out of employment between an employer and an employee;

66. The instant petition is addressing or raising issues, touching on employer, employees relationships. The application relates to issues and matters around pension and matters around provident fund.
67. The Applicant wants the court to determine the mandates of County Governments as dictated by *the Constitution* with respect to matters relating to employment and, by extension, pensions.
68. The Applicant's concern is that on 21st December 2018, the 1st Respondent, acting in complete disregard of the Constitutional provisions in respect of Devolution, devolved functions, inclusiveness, Public Participation, principles of County Public service, Good Governance and the Petitioner's legitimate expectations, illegally appointed and/or constituted a Board of Directors for the Local Authorities Provident Fund, by causing the same to be published in the Kenya Gazette under Kenya Gazette Notice No. 13232.
69. The applicant wants The Board as presently constituted be and is hereby barred from convening transacting, managing Pension Schemes for the Petitioner's employees and/or in any way carrying out its powers.
70. There are issues oscillate around how the appointment of the board, how the Pension Schemes and the provident fund are governed and managed raised in the suit.
71. The applicant further argues that the appointments are a clear violation of the principles of Devolved Governance as dictated by *the Constitution*.
72. The Applicants case is that the appointments relied on an Act of Parliament that continues to recognize the existence of Local Authorities, which recognition flies in the face of the new system of governance as provided for under *the Constitution* of Kenya 2010.
73. It argues that it is abundantly evident that Board appointments, managing of Pension Schemes, Funds and Assets of the Petitioner's employees, contributions, policy issues, et al, under Cap. 272 are all mired in an alarming state of confusion, contrary to *the Constitution*.
74. The issue whether the decision to appoint and allow the Board of Directors of the Local Authorities Provident Fund was right or wrong is an employment dispute.
75. The Applicant argues that the 1<sup>st</sup> Respondent has;
  - a. Arbitrarily appointed a Board of Directors for the said fund without involving the County Governments and being fully aware that pension matters are a function of County Governments.
  - b. Appointed the Board in complete violation of the Constitutional principles of consultation and co-operation between the two levels of government.
  - c. Failed to respect the mandates of County Governments as dictated by *the Constitution* with respect to matters relating to employment and, by extension, pensions.
76. This court is further guided by the finding in Republic v Registrar of Companies & 2 others; Waterfront Outlet Limited (C.147966) (Interested Party); Waterfront Outlets Limited



(CPR/2015/214503) (Exparte) (Miscellaneous Application E059 of 2022) [2023] KEHC 227 (KLR) (Judicial Review) (19 January 2023) (Ruling) wherein the court held,

“Suffice to note that even with the expanded scope of judicial review under the new constitutional dispensation, judicial review still remains a special jurisdiction that is majorly restricted to examination of whether an administrative decision conforms to the requirements of legality, rationality and procedural propriety. It is opportune to add that the judicial review process cannot be a substitute to statutorily provided for jurisdiction of other courts or bodies and the judicial review court cannot and should not assume jurisdiction where statute clearly places jurisdiction at the door of another court or body.”

77. From the foregoing, it is clear to this court that this court lacks the jurisdiction to determine this suit and I so hold.

**Whether the Applicant is entitled to the orders sought.**

78. Having found that this court lacks jurisdiction this court cannot determine the other issues and I so hold.

79. In arriving at this finding, I am guided by the Court of Appeal decision in Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”(underlining supplied).

**Disposition:**

80. This court lacks the jurisdiction to hear and determine this suit.

Order:

This suit is hereby transferred to the Employment and Labour Relations Court.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

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**J. M. CHIGITI (SC)**

**JUDGE**

