



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. E1564 OF 2021

IN THE MATTER OF THE ESTATE OF ROBERT JOHN SUMBI- DECEASED

SUSSY KHAADI NANDAMA.....1ST PETITIONER

NATALY NARONO SUMBI.....2ND PETITIONER

VERSUS

COUNTY PENSIONS FUND.....RESPONDENT

RULING

1. The deceased Robert John Sumbi died intestate on 29th October 2020 in Bungoma. It does not appear to be in dispute that he was a member of the County Pensions Fund (the respondent) set up under the **Retirement Benefits Act, No. 3 of 1997**. He had been a member for six months and had accumulated benefits amounting to Kshs.460,000/=. It is common ground that the deceased left a widow Sussy Khaadi Nandama (1st petitioner).
2. The present application dated 8th October 2021 relates to the eight-year-old child of the 1st petitioner with the deceased. The child goes to school at Citam School. The 1st petitioner urgently seeks Kshs.200,000/= for the child's fees at the school. She has brought the application against the respondent to release the money from the Fund. She states that the deceased had nominated her as a beneficiary to the respondent, and following that the respondent had paid Kshs.100,000/= being condolence amount following the deceased's death. She states that the respondent was subsequently compromised into not making payments to her. The Kshs.200,000/= is supposed to come from the deceased's benefits held by the respondent.
3. The respondent swore a replying affidavit through its Group Head of Legal Services and Company Secretary, Isaac K. Mitei. He stated that the deceased had not nominated a beneficiary or beneficiaries. According to him, upon the death of the deceased, in those circumstances, the benefits should be paid to the deceased's children. Whereas the Fund had investigated and established that the deceased had five (5) children, the 1st petitioner approached it to say payment of benefits should be made to only her three children. The Fund wrote to her to come for a discussion. She did not go. She instead approached the court. His other concern was that, now that the benefits at hand were Kshs.460,000/= if one child is given Kshs.200,000/= what will the others get?
4. According to the respondent, this dispute cannot be solved by the succession court. The court has no power under the **Act** to grant the orders sought. A preliminary issue of jurisdiction was raised.
5. According to Dr. Khaminwa for the 1st petitioner, the deceased had made a nomination and therefore the cited provisions of the **Act** that oust the jurisdiction of the court do not apply. Secondly, since the matter related to the welfare of the child, reliance on the **Act** would inhumanly offend the child. Thirdly, that the cited provisions were inconsistent with the Constitution. The relevant provisions of the Constitution were not cited.
6. Mr. Maondo represented the respondent.
7. Under **section 36A** of the **Act** –

“36A. Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the estate of the member for the purpose of administration and shall be paid out by the trustees in accordance with the scheme rules.”

8. On the basis of that provision, the succession court should not be entertaining any dispute relating to the benefit of the deceased.
9. When the 1st petitioner and the Fund could not agree on whether or not to pay, it formally wrote to the 1st petitioner to advise that retirement benefits in Kenya are paid in accordance with the provisions of the **Act**. She was formally invited to a meeting at the Fund on 25th June 2021 at 8.00 am to amicably resolve the matter. She did not go to the meeting.
10. **Section 46(1)** of the **Act** vests original jurisdiction upon Chief Executive Officer (CEO) under the **Act** to hear and determine any such dispute (**Albert Chaurembo & 7 Others –v- Maurice Munyao & 148 Others [2019]eKLR**). The 1st petitioner was required to write to the CEO raising the complaint, and seeking him to hear and determine it. If not satisfied with the decision of the CEO, she was required to appeal to the Retirement Benefits Appeals Tribunal set up under **sections 47 and 48** of the **Act** (**Arthur Njoroge Nganga –v- Laptrust (Umbrella) Retirement Fund Board of Trustees & Another [2018]eKLR**).
11. It is trite that where an **Act** of parliament has set up an effective remedy, the same has to be followed and exhausted before there is recourse to the ordinary courts of law (**Republic –v- Benjamin Njomo Washiali, Majority Chief Whip, National Assembly & 4 Others, Exparte Alfred Kiptoo Keter & Others [2018]eKLR**).
12. These are the reasons why I determine that the objection to jurisdiction raised by the respondents is sustainable. The **Retirement Benefits Act** has an in-built review and appellate mechanism under it. The mechanism had not been exhausted when the 1st petitioner filed the application dated 8th October 2021. For want of jurisdiction, I strike out the application but make no order for costs considering the application was on behalf of a child.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER 2021.

A.O. MUCHELULE

JUDGE