



ORIGINAL

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JUDICIAL REVIEW NO. 20 OF 2013

REV. JOSHUA KIPKEMEI.....1ST APPLICANT

REV. GEORGE ADAMBA.....2ND APPLICANT

REV. JOTHAM MATIVA.....3RD APPLICANT

REV. LUKE ODUOR.....4TH APPLICANT

REV. ELISHA KIMAIYO.....5TH APPLICANT

AND

CHIEF EXECUTIVE RETIREMENT BENEFIT

AUTHORITY.....RESPONDENT

RULING

1). This ruling is based on the preliminary point of law raised by the respondent pursuant to the applicant's application dated 6-8-2013.

The gist of the said objection is that this court does not have jurisdiction pursuant to the provisions of section 48 of the Retirement Benefits Act as well as section 5 and 26 of the same Act.

According to the respondent what the applicant was supposed to do was to file an appeal in line with section 48 thereof.

2). The counsels for the respondent as well as the interested party have opposed the same arguing that this court has the relevant jurisdiction.

I have perused the said section relied on by the objector/respondent. The same stipulates what an aggrieved party is required to do as well as stipulating the powers of the Authority. Section 26 (2) stipulates the powers of the trustees.

3). I respectfully disagree with the applicant's point of view. The application before me is one of judicial review which any party can apply as long as due process is not followed. A cursory look at the notice of motion raises such a complaint of due process among others.

4). Consequently, I do not agree that this court is not seized of jurisdiction. In any case the mandate of

this court is enshrined in the constitution and one cannot purport it through a to curtail it through a statute.

5). I do disallow the said preliminary objection and order that the notice of motion be listed down for hearing.

6). I do note also that while this ruling was pending the applicant's filed another application under certificate of urgency dated 13-8-2013 in which they sought interim orders pending the decision of the substantive notice of motion. I did grant them, the interim orders.

In the interest of justice it would be fair and reasonable to extend the said orders till the substantive application is determined.

Orders accordingly.

Dated, signed and delivered at Kisumu this 9th day of September, 2013.

**H.K.
JUDGE**

CHEMITEI

HKC/va