



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi & 32 others (All Suing as the Applicants) v Retirement Benefits
Authority & 2 others (Judicial Review Application E150 of 2025)
[2025] KEHC 8083 (KLR) (Judicial Review) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8083 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

JUDICIAL REVIEW APPLICATION E150 OF 2025

RE ABURILI, J

JUNE 9, 2025

BETWEEN

ALEX KARANJA MWANGI 1ST APPLICANT
FARIS JACKSON MACHUI 2ND APPLICANT
JAMES WAITHAKA NDURURI 3RD APPLICANT
MARGARET NGENDO GATUNE 4TH APPLICANT
MICHAEL KAGETHE MAINA 5TH APPLICANT
CHARLES NGANGA GITITI 6TH APPLICANT
MARY NYAMBURA KARINA 7TH APPLICANT
DAVID NAHASHON KUNGU 8TH APPLICANT
ELIZABETH NJAMBI MACHARIA 9TH APPLICANT
SAMUEL KIHUI MBARI 10TH APPLICANT
MARTHA WANJIRU KARIBA 11TH APPLICANT
JUSTUS STANLEY K. MUGUANYA 12TH APPLICANT
JOYCELINE NJERI 13TH APPLICANT
JOHN NGOLO 14TH APPLICANT
BEATRICE WANJERI MWANGI 15TH APPLICANT
DANSON NGANGA NGUGI 16TH APPLICANT
KEZIAH CHEGE 17TH APPLICANT



ANNE NJOKI	18 TH APPLICANT
MARY NJERI NDICHU	19 TH APPLICANT
PHEOBY MUTHONI	20 TH APPLICANT
ROSE NYAMBURA CHEGE	21 ST APPLICANT
ESTHER WANGARI KIMANI	22 ND APPLICANT
MARGARET WANJIRU	23 RD APPLICANT
PHYLIS NJOKI	24 TH APPLICANT
JULIUS KANYAGO	25 TH APPLICANT
JANE NJERI NJUGUNA	26 TH APPLICANT
AGNES NJERI KINYANJUI	27 TH APPLICANT
VIRGINIA WANGUI	28 TH APPLICANT
ANASTACIA BENEKA MUSYOKI	29 TH APPLICANT
ANASTACIA WANJIRU KANYIRI	30 TH APPLICANT
MARY KAMAU	31 ST APPLICANT
JANE NJERI MAINA	32 ND APPLICANT
KENYA COUNTY GOVERNMENT WORKERS UNION	33 RD APPLICANT
ALL SUING AS THE APPLICANTS	

AND

THE RETIREMENT BENEFITS AUTHORITY	1 ST RESPONDENT
LOCAL AUTHORITIES PENSION TRUST (LAPTRUST)	2 ND RESPONDENT
THE RETIREMENT BENEFITS APPEALS TRIBUNAL	3 RD RESPONDENT

RULING

1. The application dated 4th June 2025 is not certified urgent as no urgency is disclosed, for the reason that the impugned decision was rendered on 5th December, 2024 and it was not until 5/6/2025 that the application herein was filed.
2. The applicants seek leave of this Court to apply for several judicial review orders of:
 - a. certiorari to remove to the High Court and quashing the decision of the 1st respondent dated 25th May 2022 and the RBTA Reference No. 6 of 2022.
 - b. mandamus to compel the 2nd respondent to furnish the applicants with the statement of accounts in relation to the lumpsum accounts, gross pension and monthly pension from their time of retirement to date.
 - c. mandamus to compel the second respondent to furnish them with the current formula being used in relation to the applicants' pension emoluments.



- d. Certiorari to remove the court (*sic*) that the pension benefits for the applicants were properly calculated.
 - e. Certiorari to issue to remove to this court for purposes of quashing legal notice No. 136 of 2010.
 - f. Prohibition to prohibit the respondents or any other person acting at their behest from demanding, directing, insisting upon, or ordering the applicants to comply with any aspect of Legal Notice No. 136 of 2010 in regard to the application of the pension formula
 - g. Mandamus to compel the 2nd respondent to pay to the applicants the amount due and owing to them in relation to the lumpsum amounts, gross pension and monthly pensions in accordance with the standard formula which the applicants were subjected to upon joining of the scheme.
 - h. Mandamus to compel the respondents to pay the applicants damages for breach of contract.
3. Any other orders that this court may deem fit and just to grant.
 4. Costs of the application be borne by the respondents.
 5. The applicants claim that they are retirees and members of the 33rd applicant and that the 2nd respondent was the custodian of their pension and retirement benefits. That they were then sensitised on how their benefits and pension would be calculated but that the 2nd respondent unilaterally varied the said formula contrary to rules and regulations governing the scheme and its members. That the 2nd respondent used the varied formula in calculating the benefits due to the applicants which is prejudicial to the applicants. The applicants accuse the 2nd respondent of illegality, arbitrariness and high handedness for changing the calculations of benefits due to the applicants without notice and for refusing to respond to the letters written by the applicants complaining.
 6. The application is supported by the statutory statement and verifying affidavit sworn by Roba Duba on 4th June 2025 and the bundle of annexures thereto.
 7. The application is quite detailed and therefore at this leave stage, noting that no interim orders are sought, I will proceed to determine whether the applicants have an arguable *prima facie* case or not, as opposed to the merits of their entire case which can only be determined at the substantive stage if leave is granted.
 8. The threshold for grant of leave in judicial review is well settled. At this stage, the Court does not determine the merits of the case but only considers whether the Applicant has established an arguable case fit for further investigation. The court must exercise discretion judiciously when granting leave under Order 53 of the *Civil Procedure Rules*, ensuring that the application is not frivolous, statute barred, or an abuse of process see *Sylvana Mpabwanayo Ntaryamira v Allen Waiyaki Gichuhi & another* [2016] KEHC 4176 (KLR).
 9. The requirement for leave under Order 53 of the *Civil Procedure Rules* serves as an important procedural filter in judicial review proceedings. It ensures that only serious and arguable claims proceed to a full hearing, thereby preventing abuse of the judicial process. Judicial review is a special remedy focused on the legality of administrative actions, not their merits.
 10. In *Republic v County Secretary, Turkana County Government & 2 others; Ekai (Exparte Applicant)* [2024] KEHC 10023 (KLR), the court emphasized that the leave requirement exists to eliminate frivolous, vexatious, or hopeless claims at an early stage.



11. This mechanism also promotes judicial economy by enabling the court to allocate its resources to matters that disclose a *prima facie* case requiring judicial inquiry. The importance of the leave stage as a statutory prerequisite was reiterated in *Republic v County Secretary, Tharaka Nithi County & 2 others; Mugwetwa (Exparte Applicant)* [2022] KEHC 12596 (KLR), where the court emphasized its function in filtering unmeritorious claims.
12. Leave also protects public bodies from unnecessary litigation by ensuring they only respond to claims that demonstrate arguable grounds. In *James Gacheru Kariuki & 22 Others v Kiambu County Assembly & 3 Others* [2017] eKLR, the court noted that the requirement for leave is a substantive legal safeguard meant to shield public bodies from baseless suits.
13. Further, the leave stage allows the court to assess whether applicants have properly invoked grounds of judicial review such as illegality, irrationality, procedural impropriety, or legitimate expectation. In *Republic v Minister for Lands and Settlement & 2 others; Kipeno (Interested Party)* [2022] KEELC 3409 (KLR), the court affirmed that judicial review is a special jurisdiction and leave ensures that only cases that meet the legal threshold proceed to a substantive hearing.
14. Lastly, the requirement imposes procedural discipline, compelling applicants to present clear, precise claims supported by evidence. The importance of complying with procedural requirements was again emphasized in *Republic v County Secretary, Tharaka Nithi County & 2 others; Mugwetwa (Exparte Applicant)* [2022] KEHC 12596 (KLR), where the failure to obtain leave rendered the application incompetent.
15. In sum, the leave stage under Order 53 of the *Civil Procedure Rules* functions as a necessary procedural safeguard. It upholds the integrity of the judicial review process, ensures that only arguable cases proceed to full hearing and protects the court and parties from the strain of unnecessary litigation.
16. However, with the promulgation of the *Fair Administrative Action Rules*, 2024, issues of leave to apply may be a thing of the past as the parties have direct access to court by way of Originating Motion.
17. The question is whether the applicant has established a *prima facie* arguable case for consideration on merit at the leave stage.
18. I have perused the entire chamber summons and accompanying documents. They're indeed bulky and the applicants lament that they were short-changed by the 2nd respondent in the calculation and the formula used in calculating their pension benefits which prejudiced them. The court is being called upon to investigate to determine the justice of the case on account of illegality and arbitrariness among other grounds.
19. Without delving deep into the merits of the case which matters are elaborate and the court will have the opportunity to assess the merits thereof, if the applicants are granted the opportunity to ventilate their grievances, I am alive to the fact that the decision which is sought to be quashed, among others, is the one made in 2022 and this court will be interrogating whether that decision is still live or whether the applicants' claims are statute barred or whether there is merit in the complaint.
20. The issues raised are arguable. This is not to say that there is merit in the claims but that the applicants deserve an opportunity to ventilate their grievances before this court.
21. I grant leave to apply for judicial review orders sought in the chamber summons dated 4th June, 2025. The applicants to file and serve their substantive notice of motion within 21 days of today and in a separate Judicial Review Application file, this being a Judicial Review Miscellaneous file.
22. Accurate court fees to be paid for the notice of motion.



23. Each party to bear their own costs of the application, considering the long period of time that the applicants have taken to file the chamber summons.
24. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

