



Republic v Retirement Benefits Appeals Tribunal & 2 others; Kenyatta University Staff Retirement Benefits Scheme (Exparte Applicant) (Application E005 of 2025) [2025] KEHC 8499 (KLR) (Judicial Review) (17 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8499 (KLR)

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

**JUDICIAL REVIEW
APPLICATION E005 OF 2025**

**JM CHIGITI, J
JUNE 17, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

RETIREMENT BENEFITS APPEALS TRIBUNAL 1ST RESPONDENT

SAITO YUKIE ROMBO 2ND RESPONDENT

RETIREMENT BENEFITS AUTHORITY 3RD RESPONDENT

AND

**KENYATTA UNIVERSITY STAFF RETIREMENT BENEFITS
SCHEME EXPARTE APPLICANT**

JUDGMENT

1. The application before this Court is dated 23rd January, 2025 wherein the Applicant seeks the following orders:
 1. That this honourable court do grant the Exparte applicant an Order of Judicial Review in the nature of Certiorari to bring up and quash the proceedings and the decision of the 1st respondent made on 19th December 2024 in RBAT Appeal No. 7 of 2024.
 2. That this honourable court do grant the Exparte applicant an Order of Judicial Review in the nature of Prohibition against the 2nd Respondent from demanding the pension benefits that were set-aside for John Yona and Fenny Odhiambo (minors) for their maintenance and payment of school fees.



3. That the costs of this application be in the cause.
2. The gist of the application is that one Dr. George Omollo Rombo (deceased) was a member of the Applicant herein, PF. No. 6541 who passed on, 17th October 2016 without a nominated any beneficiary.
3. It is contended that at the time his death his benefits stood at Kshs.9,589,186.00.
4. The application flows from the fact that the 1st Respondent's decision of 19th December 2024 that resulted in the 2nd Respondent herein being paid Pension monies which decision the Applicant argues was made in error of law and is illegal, irrational, unreasonable and ultra vires thus amenable to judicial review.
5. The Applicant deposes that the 2nd Respondent requested for payment of the deceased's benefits on 19th October 2016 claiming to be the Deceased's wife and presented copies of their marriage certificate, burial permit and ID of the Deceased.
6. The Applicant further deposes that on 19th October 2016 one Rose Akinyi requested for payment of the Deceased's pension benefits claiming to be the deceased's wife.
7. It is the Applicants case that Rose Akinyi presented birth certificates of John Yona and Fenny Adhiambo which had the name of the Deceased indicated as their father.
8. It is the Exparte's applicants' case that they were presented with two chief letters as follows:
 - i. Letter from chief of Kawino location dated 23rd October 2016 which indicated that Dr. George Omollo Rombo (Deceased) and Rose Akinyi were traditionally married, dowry was paid, and they had two children namely, John Yona and Fenny Adhiambo.
 - ii. Letter from Chief of North Kisumu dated 14th December 2016 which indicated that the Dr. George Omollo Rombo (Deceased) was survived by Yukie Saito (first wife) Rose Akinyi (second wife), John Yona (son) and Fenny Adhiambo (daughter).
9. It is contended that on 4th May 2017 a meeting was held between the Applicant's Trustees and Rose Akinyi.
10. During the meeting Rose Akinyi stated that she was married to the deceased under Luo customary law in February 2002 and dowry was paid and that the Deceased had another wife called Yukie Saito
11. It is contended that on 24th July 2017 the 2nd Respondent's Principal Pensions Officer wrote a letter to the Director of Civil Registration to confirm the authenticity of the birth certificates for John Yona and Fenny Adhiambo and the somewhere confined to be true copies on 31st August, 2017 and on 16th October 2017.
12. It then followed that on 14th November, 2017 Rose Akinyi passed away and buried at the Deceased's land parcel No. Kisumu/Muhoroni/1075 situated in God-Nyithindo location at Muhoroni.
13. It is the Applicant's case that its Board of Trustees resolved how the Deceased's pension benefits would be distributed.
14. It is the Applicant's case that on 6th July 2023 Rose Akinyi's son, Kenneth Omondi Okello filed ^{summons} for Revocation of the Letters of Administration Intestate that had been issued to the 2nd respondent on 30th May 2017 in Nairobi High Court Succession Cause No. 257 of 2017; Estate of George Omollo Rombo.



15. The High Court delivered a judgment dismissing the summons of revocation that had been filed by Kenneth Omondi Okello on the basis that he was not the biological son I dependent of the deceased together with his siblings, John Yona and Fenny Odhiambo on 17th November 2023.
16. According to the Applicant, the 2nd respondent lodged a complaint before the 3rd respondent's Chief Executive Officer, against the Applicant's decision of 22nd November 2017 that had resolved how the pension benefits of the deceased were to be apportioned and distributed.
17. The 3rd respondent's Chief Executive Officer made a determination on 4th July 2024 upholding the Applicant's decision to allocate 40% of the deceased's pension benefits to the minors, John Yona and Fenny Adhiambo.
18. It is the Applicant's case that on 2nd August 2024 the 2nd respondent lodged an appeal before the 1st Respondent who allowed the 2nd respondent's appeal on 19th December 2024 directing the Applicant to release the outstanding pension amounts due to the late George Omolo Rombo to the 2nd respondent within 30 days.
19. It is the Applicant's case that the said decision to release the Pension monies to the 2nd Respondent has resulted in the minors; John Yona and Fenny Odhiambo (who are said to be under the custody of their aunt) being denied their upkeep and school fees thus denying them their right to education.
20. The Applicant canvassed their application by way of written submissions dated 28th February, 2025.
21. It is submitted that the 2nd Respondent's Notice of Preliminary Objection as raised does not satisfy the ingredients of a Preliminary Objection and that this Honourable Court is properly seized with jurisdiction to determine the instant application.
22. Reliance is placed in the cases of Oraro -vs- Mbaja (2005) 1KLR 141 and Charles Onchari Ogoti v Safaricom Limited & Another [2020] eKLR which adopts the definition of a preliminary objection in Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696, which is to the effect that;

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit...Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

23. It is contended that pension benefits cannot be subjected to succession proceedings and thus the impugned judgment delivered in Nairobi High Succession Cause No. 257 of 2017 is not applicable to the deceased's pension benefits.
24. It is further submitted that the 1st Respondent delivered on 19th December 2024 be quashed and set-aside as it was made in error of law, is illegal contrary to Section 36A of the [Retirement Benefits Act](#) which precludes pension benefits from forming part of the estate of the deceased but the 1st Respondent relied on the High Court Succession judgment.



25. The Applicant argues that 1st Respondent acted contrary Sections Section 36A of the *Retirement Benefits Act*, Regulation 19 of the Retirement Benefits (Individual Retirement Benefit Schemes) Regulations, 2000 and Regulation 23 of the Retirement Benefits (Occupations Retirement Benefits Schemes) Regulations 2000.
26. According to the Applicant, the 2nd respondent's trustees exercised their discretion properly in the distribution of the Estate of the deceased who had not nominated a beneficiary (s).
27. In the case of Re Estate of Carolyn Acheng' Wagah (Deceased) (2015) eKLR the court held that: -

“From the material before me, the deceased was a member of the Social Service League Staff Retirement Benefits Scheme. She had made a nomination in favour of her children. By virtue of Section 36A of the *Retirement Benefits Act*, the benefits accruing to the said children do not form part of the estate of the deceased, and should not be the subject of these proceedings. Where issues arise concerning those funds, the process for addressing them is that set out in the *Retirement Benefits Act* and the subsidiary legislation made under it. The probate court has no jurisdiction over such benefits and it cannot distribute them.”
28. It is the Applicant's case that the 1st respondent had no mandate / power to determine the Deceased's beneficiaries/dependents thus acted ultra vires, irrational and unreasonable as they failed to consider the best interests and rights of the children as enshrined under Article 53 of *the Constitution* and thus entitled to the writ of Certiorari and Prohibition.
29. The Applicant submits that if the decision delivered by the 1st respondent is not stayed, they will suffer substantial loss as the best interests of the said children would be at jeopardy.

The 1st Respondents' case;

30. The 1st Respondents in response to the Application filed Grounds of Opposition dated 5th February, 2025. They oppose the application on the following grounds:
 - a. The Application is unmerited, frivolous, vexatious and an abuse of the due process of the Court since it does not disclose how the 1st Respondent has acted outside their mandate as provided in law
 - b. The application is intended to curtail the statutory obligations and duties of the 1st Respondent
 - c. The application does not disclose illegality on the part of the 1st Respondent.
 - d. This Honorable Court would be usurping the statutory mandate of the 1st Respondent if it were to take up that role as proposed by the Ex-parte Applicant.
 - e. The Applicant is seeking that this Honorable Court directs a Public Tribunal to exercise or not to exercise his/her statutory discretion in a particular manner hence usurp the said officer's authority.
 - f. The outcome of the Judicial Review Notice of Motion Application dated 23rd January, 2025, when allowed, shall automatically act as an appeal in respect to the Judgment of Honourable Lady Justice Maureen Odero delivered on the 17th day of November, 2023 in Milimani High Court Succession Cause No. 257 of 2017 (Estate of George Omolo Rombo).



31. It is its submission that it acted rationally, reasonably and legally in reaching the decision as set out in Section 49 of the Retirement Benefits Appeal Tribunal provides for the Powers of Appeals Tribunal as follows:
1. On the hearing of an appeal, the Tribunal shall have all the powers of a subordinate court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.
 2. Where the Tribunal considers it desirable for the purpose of avoiding expense or delay or any other special reason so to do, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to the interrogatories within the time specified by the Tribunal.
 3. The Power to handle appeals emanating from Retirement Benefits Authority decisions.
 4. The Tribunal shall have power to award the costs of any proceedings before it and to direct those costs shall be paid in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.
 5. Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may, in its discretion, admit to be heard on behalf of the party.
32. It is its case that the Applicant herein has not proven breach of any of the above criteria as set out in the cases of Municipal Council of Mombasa versus the Republic and Umoja Consultants Limited (2002) eKLR and Pastoli vs Kabale District Local Government Council & Others [2008] 2 EA 300.
33. It is submitted that the instant Application is an appeal disguised as a Judicial Review Application and thus lacks merit and thus should be dismissed with costs.

The 2nd Respondent's case;

34. The 2nd Respondent in response to the filed a Preliminary Objection dated 30th January, 2025 and a Replying Affidavit of one Saito Yukie Rombo sworn on even date.
35. The Objection is based on the following grounds:
1. This Honourable court is bereft of jurisdiction to hear and determine the instant matter for reasons that;
 - a. That the substance founding this application and evidentiary material sought to be relied upon by the applicant in this application have already been determined in Milimani High Court Succession Cause No. 257 of 2017 (Estate of George Omolo Rombo).
 - b. This is an appeal camouflaged as a judicial review application, against the judgment delivered on the 17th day of November 2023 in Milimani High Court Succession Cause No. 257 of 2017 (Estate of George Omolo Rombo) and the 1st Respondent's judgment in RBAT Appeal No. 7 of 2024 (Saito Yukie Rombo vs The Retirement Benefits Authority and Another)
 2. The application does not disclose procedural impropriety to merit intervention by the court.
 3. This application is a flagrant and abject abuse of the process of the court.



36. It is the 2nd Respondent's case that the application before this honourable court does not disclose what was illegal, irrational, unreasonable and ultra vires in the 1st respondent's decision delivered on the 19th day of December 2024.
37. She argues that the Tribunal in their finding in RBAT Appeal No. 7 0(2024 Saito Yukie Rombo vs The Retirement Benefits Authority and Another took cognizance of the factual findings of the High Court Milimani High Court Succession Cause No. 257 of 2017; Estate of George OmoIo Rombo in finding the following:
1. The appeal be and is hereby allowed.
 2. The 1st Respondent's decision dated 4th July 2024 be and is hereby set aside.
 3. The 2nd respondent is hereby directed to release the outstanding pension amounts due to the late George Omolo Rombo to the appellant within 30 days.
38. She further argues that the High Court in Milimani High Court Succession Cause No. 257 of 2017; Estate of George OmoIo Rombo found that:
1. That I was the sole rightful beneficiary of the estate of the Late George Omolo Rombo.
 2. That one Rose Akinyi was not a wife to the Late George Omolo Rambo.
 3. That John Yona and Fenny Adhiambo were not biological children of the Late George Omolo Rombo.
 4. That the birth certificates for John Yona and Fenny Adhiambo (the minors) had no probative value having been issued after the death of the late George Omolo Rambo and them having confirmed that they were not biological children of the deceased.
 5. That the minors were not dependants and/or beneficiaries of the late George Omolo Rambo.
39. She deposes that the aggrieved parties' application for stay of the judgment and orders in the succession matter was dismissed.
40. It is contended that the Applicant inviting this honorable court to review the 1st Respondent's decision is unconstitutional, absurd, illegal, irrational, unreasonable and ultra vires as the 1st Respondent in arriving at its decision was cognizant of the provisions of Sections 49 (3) and 36A of the [Retirement Benefits Act](#).
41. According to her, the instant application is to invite this court to determine a matter based on evidentiary documents that have already been placed before the High Court and canvassed via viva voce evidence and a determination on their insufficiency made.
42. It is their submission that the instant application defies the provisions of Article 165 (6) of [the Constitution](#) as the said application is an appeal disguised as a Judicial Review application.
43. The 2nd Respondent invokes Section 7 of the [Fair Administrative Action Act](#) which according to her lays down the grounds upon which a court may review an administrative action or decision.
44. Reliance is placed in the case of Municipal Council of Mombasa VS Republic and Umoja Consultants Limited (Civil Appeal No. 185 of 2001) (Nairobi).
45. It is her case that the 1st Respondent acted within its statutory powers in making the impugned decision and that by dint of Section 48 of the [Retirement Benefits Act](#) the Applicant ought to lodge their Appeals to the 1st Respondent within 30 days of the impugned decision.



46. She contends that it is not disputed that the Deceased George Omolo did not make any nomination with regard to his pension benefits held by Applicant and as such, the Applicant was obligated to invoke the provisions of Rule 24 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000.
47. It is submitted that it would defeat logic for the Applicant to say that one Rose Akinyi was a wife of the deceased yet in view of the 2nd Respondent's marriage certificate in their possession, they ought to have known that the deceased was incapable of contracting any other marriage.
48. It is further submitted that the 1st Respondent established that the minors were neither children nor beneficiaries of the Deceased as the birth certificates relied on by the Applicant were not authentic, thus no interests to be balanced in their favor and prays that the instant application be dismissed with costs.

The 3rd Respondent's case;

49. The 3rd Respondent in response to the Applicant's application filed a Replying Affidavit of Antony Kiarahu sworn on 13th February, 2025.
50. The 3rd Respondent is established under the [Retirement Benefits Act](#) (Cap 197) with a statutory mandate to inter alia protect the interests of members of retirement benefits schemes.
51. According to them the instant application stems from the distribution of benefits accruing to George Omolo Rombo (Deceased) to his identified beneficiaries.
52. It is deposed that the Deceased was until his demise a member of Kenyatta University Staff Retirement Benefits Scheme, an irrevocable trust registered by the 3rd Respondent as an occupational retirement benefits scheme, and governed by inter alia by the [Retirement Benefits Act](#), the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000, the trust deed establishing the trust, and the rules of the trust.
53. It is their case that George Omolo Rombo had prior to his death not nominated any beneficiary to the benefits payable which led to them making the decision on how the said benefits shall be distributed.
54. The 2nd Respondent then lodged a complaint with the 3rd Respondent on 22nd April 2024 where she expressed dissatisfaction with the Applicant's decision on the distribution of the death benefits of the late George Rombo.
55. Accordingly, the 3rd Respondent reviewed its decision and upheld the Applicant's decision as it found it sound and just explaining in detail the factors and the reasons that led to the conclusion vide its letter dated 4th July 2024.
56. Aggrieved by the decision of the 3rd Respondent, the 2nd Respondent lodged an Appeal with the 1st Respondent vide her Memorandum of Appeal dated 2nd August 2024.
57. It then followed that the 1st Respondent in exercise of the power conferred by Section 49 of the Retirement Benefits Act and the Retirement Benefits (Tribunal) Rules, 2000 delivered its judgment on 19th December 2024, allowing the appeal and setting aside the determination of 4th July 2024.
58. It is its case that the 3rd Respondent, having discharged its role as the arbiter of first instance, is misjoined to these proceedings as set out in Order 1, Rule 3 of the Civil Procedure Rules, for no relief is sought against it, and its inclusion is neither necessary nor proper.
59. The 3rd Respondent filed written submissions dated 26th March, 2025.



60. It is contended that it be struck out of the proceedings before this honourable court and invoke Order 1 Rule 10(2) of the Civil Procedure Rules.

61. It is its submission that under Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 under Rule 5 which states as follows:

“The following procedure shall apply with respect to addition, joinder, substitution and striking out of parties—

- a. Where the petitioner is in doubt as to the persons from whom redress should be sought, the petitioner may join two or more respondents in order that the question as to which of the respondent is liable, and to what extent, may be determined as between all parties
- b. A petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every proceeding deal with the matter in dispute
- c. Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.
- d. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just: -
 - i. Order that the name of any party improperly joined, be struck out; and that the name of any person who ought to have been joined, or
 - ii. whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.
- e. Where a respondent is added or substituted, the petition shall unless the court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.”

62. It argues that the principle that misjoinder cannot ruin a cause of action that is properly before the Court was underscored by the Supreme Court in the case of *Ndii & others v Attorney General & others* [2021] (KLR) where it was held as follows:

“Be that as it may, order 1 rule 9 of the Civil Procedure Rules is clear that a suit cannot be defeated for misjoinder or non-joinder and that what the court should be bothered with is the determination of the rights of the parties; that rule reads as follows:

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”



63. It is further submitted that Applicant has failed to establish a reasonable cause of action against the 3rd Respondent.

64. Reliance is placed in Karl Wehner Claasen v Commissioner of Lands & 4 others [2019] eKLR where the Court of Appeal opined that:

“A cause of action denotes a combination of facts which entitles a person to obtain a remedy in court from another Person and includes a right of a person violated or threatened violation of such right by another person.”

65. The 3rd Respondent prays that it is not a necessary party to this suit and that no orders should be issued against it.

Analysis and determination:

Following are the issues for determination;

1. Whether this court has jurisdiction.
2. Whether the Application has merit.
3. Who will bear the costs?

Whether this court has jurisdiction

66. In determining this issue, the court is guided by the case of Board of Governors Moi High School Kabarak & another versus Malcolm Bell Supreme Court Petitions Nos. 6 and 7 of 2013 (eKLR) wherein it was held that” for the proposition that a “Court’s Jurisdiction flows from either *the Constitution* or Legislation or both. As such a Court cannot arrogate to itself Jurisdiction exceeding that which is conferred upon it by Law. It must operate within the Constitutional limits; and lastly the inherent power of the Court is meant to prevent its process from being misused in such a way as to diminish its capability to arrive at a Just decision of the dispute”.

67. Article 165 of *the Constitution* gives this court jurisdiction.

68. The Law on preliminary objection is well settled in the case of Mukisa Biscuit Manufacturing Co. Limited vs. West End Distributors Limited [1969] EA 696, Newbold, V.P, observed as follows;

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of Law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase cost and, on occasion, confuse issues. This improper practice should stop.”

69. The Board of Trustees resolved how the Deceased’s pension benefits would be released.

70. Rose Akinyi’s son, Kenneth Omondi Okello filed summons ^{for} Revocation of the Letters of Administration Intestate that had been issued to the 2nd respondent on 30th May 2017 in Nairobi High Court Succession Cause No. 257 of 2017; Estate of George Omollo Rombo.

71. The High Court delivered a judgment dismissing the summons of revocation that had been filed by Kenneth Omondi Okello on the basis that he was not the biological son I dependent of the deceased together with his siblings, John Yona and Fenny Odhiambo on 17th November 2023.



72. The 2nd respondent lodged a complaint before the 3rd respondent's Chief Executive Officer, against the Applicant's decision of 22nd November 2017 that had resolved how the pension benefits of the deceased were to be apportioned and distributed.
73. The 3rd respondent's Chief Executive Officer made a determination on 4th July 2024 upholding the Applicant's decision to allocate 40% of the deceased's pension benefits to the minors, John Yona and Fenny Adhiambo.
74. On 2nd August 2024 the 2nd respondent lodged an appeal before the 1st Respondent who allowed the 2nd respondent's appeal on 19th December 2024 directing the Applicant to release the outstanding pension amounts due to the late George Omolo Rombo to the 2nd respondent within 30 days.
75. In the Speaker of National Assembly v Njenga Karume [2008] 1 KLR 425 the court had this to state;
“In our view there is considerable merit.....that where there is clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”
76. Section 9 (3) The *Fair Administrative Action Act* 2015 states that:
“The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under subsection (1). (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.”
77. The 1st Respondent allowed the 2nd respondent's appeal on 19th December 2024 directing the Applicant to release the outstanding pension amounts due to the late George Omolo Rombo to the 2nd respondent within 30 days.
78. This court is of the opinion that the correct procedure was followed in determining the appeal that culminated in the impugned Appeal and this court cannot interfere with the said determination. This court cannot re hear the appeal.
79. To do so would amount to overstepping its judicial review authority given that that would call for a merit analysis of the evidence that parties tendered like the birth certificates, witnesses to testify and the calling of witnesses to prove that marriages existed.
80. In so holding I am guided by the case of in the case of Republic v Attorney General & 4 others Ex- parte Diamond Hashim Lalji and Ahmed Hasham Lalji [2014] eKLR it was observed that:
“Judicial review applications do not deal with the merits of the case but only with the process. In other words, judicial review only determines whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters. It follows that where an Applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect urges the Court to determine the merits of two or more different versions presented by the parties the Court would not have jurisdiction in a judicial review proceeding to determine such a



matter and will leave the parties to resort to the normal forums where such matters ought to be resolved.

The Court in judicial review proceedings is mainly concerned with the question of fairness to the Applicant in the institution and continuation of the criminal proceedings and once the Court is satisfied that the same are bona fides and that the same are being conducted in a fair manner, the High Court ought not to usurp the jurisdiction of the trial Court and trespass onto the arena of trial by determining the sufficiency or otherwise of the evidence to be presented against the Applicant.

Where, however, it is clear that there is no evidence at all or that the prosecution's evidence even if were to be correct would not disclose any offence known to law, to allow the criminal proceedings to continue would amount to the Court abetting abuse of the Court process by the prosecution.”

81. In any event, the proof of marriage and birth certificates issues were addressed and settled by the High Court in the High Court in Milimani High Court Succession Cause No. 257 of 2017; Estate of George OmoIo Rombo where it was held inter alia:

1. That one Rose Akinyi was not a wife to the Late George Omolo Rambo.
2. That John Yona and Fenny Adhiambo were not biological children of the Late George Omolo Rombo
3. That the birth certificates for John Yona and Fenny Adhiambo (the minors) had no probative value having been issued after the death of the late George Omolo Rambo and them having confirmed that they were not biological children of the deceased.
4. That the minors were not dependants and/or beneficiaries of the late George Omolo Rambo.

82. Allowing the Application dated 23rd January, 2025 will culminate into an illegality in that it will be tantamount to this court sitting on an appeal in respect to the Judgment of Honourable Lady Justice Maureen Odero delivered on the 17th day of November, 2023 in Milimani High Court Succession Cause No. 257 of 2017 (Estate of George Omolo Rombo). This court lacks the capacity to do that.

83. This court is satisfied that the 2nd Respondent acted rationally, reasonably and legally in reaching the impugned decision.

84. Section 49 of the Retirement Benefits Appeal Tribunal provides for the Powers of Appeals Tribunal as follows:

On the hearing of an appeal, the Tribunal shall have all the powers of a subordinate court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

85. The Applicant should have lodged an appeal in the High Court. In order to succeed in this suit, the applicant has to prove that its case falls within the parameters that settled in the case of *Pastoli vs Kabale District Local Government Council & Others*, (2008) 2 EA 300, that:

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See *Council of Civil Service Union v Minister for the Civil Service* [1985] AC 2; and also, *Francis Bahikirwe Muntu and others v Kyambogo University*, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR).



Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: an Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph “E”.

Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876).”

Disposition;

86. In the instant suit, the court finds that the Applicant has not proven its case within the principles as enunciated in the Pastoli case (Supra).

Order;

1. The Application is dismissed.
2. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JUNE 2025

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J. CHIGITI (SC)

JUDGE

