



**Murigi & 133 others v National Bank of Kenya Staff Retirement Benefits Scheme & another  
(Miscellaneous Application 3 of 2021) [2023] KEHC 3830 (KLR) (Civ) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3830 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS APPLICATION 3 OF 2021**

**JN MULWA, J**

**MAY 2, 2023**

**BETWEEN**

**ELIAS MAINA MURIGI & 133 OTHERS ..... APPLICANT**

**AND**

**NATIONAL BANK OF KENYA STAFF RETIREMENT BENEFITS  
SCHEME ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL BANK OF KENYA STAFF PENSION FUND REGISTERED  
TRUSTEES ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before court is a Notice of Motion Application dated February 14, 2020 brought under Article 159(1) of the *Constitution*, Section 3, 3A and 28 of the *Civil Procedure Act* and Order 51 Rule 1 and 2, Order 22 Rule 7 of the *Civil Procedure Rules*. The Applicants seek the following orders:
  1. That the Honourable Court do adopt as the Judgment of this Court the decision of the Retirement Benefits Appeals Tribunal dated January 13, 2017 in Tribunal Appeal No 8 of 2010.
  2. That the Honourable Court do issue a Decree and Warrant of execution against the Respondents in favour of the Applicants in terms of the Ruling of the Retirement Benefits Appeals Tribunal dated February 13, 2017 in Tribunal Appeal No 8 of 2010.
  3. That costs of this Application be borne by the Respondents.



2. The application is based on the grounds set out on its face and the supporting affidavit sworn by Jack Leonard Gwallah, one of the Applicants herein duly authorized by his Co-applicants to swear the same on their behalf.
3. The Respondents opposed the application through a Replying Affidavit sworn on March 11, 2020 by Habil Waswani and the annexures thereto.
4. The application was disposed of by way of written submissions which this court has duly considered. The only issue for consideration is whether the application is merited.
5. On February 13, 2017, the RBA Tribunal made a decision in Tribunal Appeal No 8 of 2010 filed therein by the Applicants herein against the Respondents and issued the following orders:
  - “ 1. The 2<sup>nd</sup> Respondent shall pay individually to each of the 83 Appellants in this application the sum in the first column set out against their respective names.
  2. The sum payable to each of the Appellants in the one (1) above be reduced by any sum paid after 8<sup>th</sup> August, 2014, if any.
  3. The 2<sup>nd</sup> Respondent does collect all the tax, if any, due on such payment.
  4. The 2<sup>nd</sup> Respondent pays interest on the outstanding balance due to each Appellant at the rate earned by the Scheme in each financial year until payment in full.
  5. The Appellants shall have costs of the application assessed at Kshs 10,000/- payable first by the 2<sup>nd</sup> Respondent.”
6. The Retirement benefits authority Appeals Tribunal derives its jurisdiction from Section 48 of the *Retirement Benefits Act* which empowers it to hear appeals from a decision of the Retirement Benefits Authority or its CEO and appeals from disputes between any person and RBA as to exercise of powers under the Act. Section 49(1) of the Act provides that on hearing of an appeal, the tribunal exercises 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. Further, Rule 12 of the *Retirement Benefits (Tribunal) Rules 2010* allows the said Tribunal to adopt the *Civil Procedure Rules* where applicable. It states thus:
 

“In matters of procedure not governed by these Rules or the Act, the Tribunal may adopt the *Civil Procedure Rules* made under the *Civil Procedure Act* where applicable.”
7. In addition, it is important to note that the Act does not confer any jurisdiction on the High Court to perform any act regarding decisions of the RBA Appeals Tribunal. In fact, in the case of *Staff Pension Fund & Kenya Commercial Bank Staff Retirement (DC) Scheme 2006 & another v Ann Wangui Ngugi & 524 others* [2018] eKLR, the Court of Appeal held that:
 

“...the law does not provide for an appeal from the decision of the Retirements Benefits Tribunal and such right of appeal can neither be implied nor inferred to confer jurisdiction to ELRC or the High Court Jurisdiction to entertain such an appeal. It follows that the appeal filed by the respondents is incompetent.”
8. From the above analysis, it is clear that this court has no role to play regarding the decision of the RBA Appeals Tribunal of February 13, 2017. The court lacks jurisdiction to determine the application and



must therefore down its tools in line with the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR where the court held that:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

9. The upshot is that the application dated February 14, 2020 is incompetent and is hereby dismissed. Each party shall bear its own costs of the Application.

Orders accordingly.

**DATED, DELIVERED AND SIGNED IN NAIROBI THIS 2ND DAY OF MAY 2023.**

**JANET MULWA**

**JUDGE**

