

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAKURU**

**ELRC CAUSE NO. E004 OF 2024**  
***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**JOAN**

**AOKO.....CLAIMANT/APPLICANT**

**VERSUS**

**EGERTON UNIVERSITY.....**

**.....RESPONDENT**

**RULING**

**Introduction**

1. The Claimant/Applicant filed a Notice of Motion dated 30<sup>th</sup> April 2025 under Certificate of Urgency seeking the following orders that:

*a) Spent*

*b) This Honourable Court be pleased to review and/or vary the judgment delivered on 26<sup>th</sup> February 2025 on the basis that the Honourable Judge made an error of fact/mistake on the face of the record in finding that the Claimant/Applicant had not proved her*

*entitlement to an award of deferring salary and unremitted pension.*

*c) The costs of this application be provided for.*

**Claimant/Applicant's supporting affidavit and further affidavit**

2. In the supporting affidavit sworn by the Claimant/Applicant on the same date as the application, she avers that she commenced this suit via a Statement of Claim dated 30<sup>th</sup> January 2024, and that the Respondent filed their response on 9<sup>th</sup> July 2024.
3. The Claimant/Applicant avers that both parties agreed through a consent dated 23<sup>rd</sup> September 2024 to rely solely on written witness statements and submissions, though only the Claimant filed submissions.
4. The Claimant/Applicant avers that judgment was delivered on 26<sup>th</sup> February 2025, denying claims for pension, deferred pay, and unremitted loan deductions.

5. The Claimant/Applicant now seeks a review, arguing the court erred in finding that it lacked jurisdiction over pension issues, despite the Respondent admitting non-remittance of pension contributions totalling Kshs.1,281,341.60/=.
6. The Claimant/Applicant also avers that deferred pay and loan deductions were acknowledged by the Respondent, with only the amounts in dispute. Supporting documents, including payslips and bank statements, show deductions were made but not remitted.
7. In a further affidavit dated 23<sup>rd</sup> May 2025, the Claimant/Applicant avers that she secured a loan of Kshs. 2,410,700/= from KCB Bank in September 2019, with an agreement that the Respondent would deduct Kshs.51,171/= monthly from her salary to repay the loan.
8. The Claimant/Applicant avers that when she resigned in June 2023, a total of Kshs.1,534,234.95/= had been deducted, yet the Respondent failed to remit the full amount to the bank, often falling short of the agreed monthly installment.

9. Consequently, the Claimant/Applicant avers that KCB Bank withdrew Kshs.340,816.14/= directly from her personal account, resulting in a double deduction.
10. Additionally, under the Respondent's University Retirement Benefits Scheme, the Claimant/Applicant avers that she was to contribute 10% of her basic salary while the Respondent was to contribute 20%, but neither contribution was remitted despite deductions appearing on her payslips.
11. The Claimant/Applicant asserts that her dispute is with the Respondent, not the pension fund, due to the failure to remit these funds.
12. The Claimant/Applicant asserts that the court overlooked the evidence, resulting in factual errors, and urges this court a review to prevent prejudice and uphold justice.

### **Respondent's Ground of opposition**

13. In opposition to the application, the Respondent filed grounds of opposition dated 16<sup>th</sup> June 2025 on the grounds that:

*1. The application has not met the threshold under Order 45 of the Civil Procedure Code to warrant the orders sought for review of the judgment delivered on 26<sup>th</sup> February 2025.*

*2. The judgment delivered was arrived at judiciously, without any mistakes, errors and/or omissions warranting the orders sought for the review of the judgment.*

*3. This court lack jurisdiction to entertain the application as it became functus officio after it delivered its judgment on 26<sup>th</sup> February 2025.*

*4. The application lack merits, is null and void, bad in law, incompetent and a waste of judicial time.*

14. Parties canvassed the application by way of written submissions.

### **Claimant/Applicant submissions**

15. The Claimant/Applicant submitted that the judgment delivered on 26<sup>th</sup> February 2025 denied her claims for pension, deferred pay, and unremitted loan

deductions. She argues that the court made factual errors or mistakes apparent on the face of the record, prompting her to file a review application. The Claimant/Applicant relied on **section 16 of the Employment and Labour Relations Court Act**, which empowers the court to review its judgments, awards, orders, or decrees in accordance with the applicable rules. **Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules 2024** provides as follows:

***“A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—***

***(a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;***

- (b) on account of some mistake or error apparent on the face of the record;**
- (c) if the judgment or ruling requires clarification; or**
- (d) for any other sufficient reason.”**

16. The Claimant/Applicant relied on the cases in ***National Bank of Kenya Limited V Ndungu Njau [1997] KECA 71 (KLR)*** and ***Paul Mwaniki V National Hospital Insurance Fund Board of Management [2020] KEHC 7414 (KLR)***, both cited the case of ***Ribiru V Mwaniki & 2 others [2024] KEHC 10417***. These cases affirm that a review may be granted to correct an apparent error or omission that is self-evident and does not require extensive argument. However, a review cannot be granted merely because a different judge might have reached a different conclusion or due to a misinterpretation of the law. The Claimant argues that her case meets the threshold for review due to clear factual errors on the record.

17. The Claimant/Applicant argues that the court erred in finding it lacked jurisdiction over the issue of unremitted pension contributions. She clarifies that

her dispute is with the Respondent, who deducted her pension contributions and failed to remit both her 10% share and the Respondent's 20% share to the Respondent Retirement Scheme. The Respondent admitted non-remittance, acknowledging an outstanding amount of Kshs.1,281,341.60/=, while the Claimant asserts the figure is Kshs.1,364,076/=. The Claimant/Applicant relied on ***Independent Electoral and Boundaries Commission & another V Mule & 3 Others [2014] KECA 890 (KLR)***, the Court of Appeal cited a decision of the Supreme Court of Nigeria in ***Adetoun Oladeji (NIG) V Nigeria Breweries PLC SC 91/2020***, which underscores that parties are bound by their pleadings and admissions.

18. The Claimant/Applicant submitted that the court erred in dismissing her claims for deferred pay, unremitted loan deductions, and Sacco contributions. She argues that the Respondent admitted owing her deferred pay of Kshs. 547,923.80/=, though she substantiated a higher amount of Kshs.1,128,047.95/= through her June 2023 payslip, which detailed specific deferred components. Regarding the unremitted loan deductions, she

demonstrates that KCB Bank deducted Kshs.340,816.14/= from her personal account due to the Respondent's failure to remit previously deducted amounts, resulting in a double deduction totalling Kshs. 650,822.93/=. She also claims Kshs.48,578.55/= in unremitted Sacco contributions, which remains unchallenged. The Claimant relied on the case of ***Trust Bank Limited V Paramount Universal Bank Limited & 2 Others [2009] KEHC 4030 (KLR)***, she argues that the Respondent's failure to adduce evidence renders her claims uncontroverted. The Claimant/Applicant further relied on the case of ***Orix Oil (Kenya) Limited V Paul Kabeu & 2 Others [2014] KEHC 5086 (KLR)***, asserting that as the successful party, she is entitled to costs.

19. The Claimant/Applicant therefore urges the court to review its judgment and award her the amounts claimed, emphasizing that justice and fairness demand such redress.

### **Respondent's submissions**

20. The Respondent relied on ***Order 45(1) of the Civil Procedure Rules***, which provides for review of judgment specifically:

- a) Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced at the time when the judgment was made;
- b) Mistake or error apparent on the face of the record; or
- c) Any other sufficient reason

21. The Respondent submitted that the Claimant argues that the Court made a factual error by stating it lacked jurisdiction over pension matters, asserting instead that the Employment and Labour Relations Court (ELRC) has authority under **Article 162(2) of the Constitution of Kenya** and **section 12 of the ELRC Act** to hear employment-related disputes. However, the Respondent argues that pension disputes, particularly those involving unremitted pension funds under a statutory scheme, fall under the jurisdiction of the Retirement Benefits Authority (RBA), as outlined in **Sections 46 and 48 of the Retirement Benefits Act**. The Respondent relied on the case of **Jumar V Postal Corporation of Kenya [2024] KEELRC 903 (KLR)**, confirms that such

matters should be addressed through the RBA's internal mechanisms and appeals tribunal, not the ELRC.

22. The Respondent argues that the Applicant's request for review fails to meet the legal threshold under **Order 45 of the Civil Procedure Rules**, as it merely seeks to re-litigate issues already addressed during the substantive hearing and does not identify any error apparent on the face of the record or present new evidence. The Respondent submitted that the judgment delivered on 26<sup>th</sup> February 2025 was, according to the Respondent, thorough and based on a careful evaluation of the evidence, with the Claimant failing to prove entitlement to deferred salary and pension contributions. The Respondent further asserts that the court became *functus officio* upon delivering its judgment, meaning it cannot revisit the matter except in narrowly defined circumstances. This principle was affirmed in **Telkom Kenya Ltd V John Ochanda (2014) eKLR**, where the Court of Appeal held that once a final decision is rendered, the matter cannot be reopened.

23. The Respondent concludes that the application is meritless, dilatory, and should be dismissed with costs.

### **Analysis and determination**

24. The court has considered the application, supporting affidavit, further affidavit, grounds of opposition, together the rival submissions by both counsels; the issue for determination is whether the application is merited.

25. ***Section 16 of the Employment and Labour Relations Court Act*** provides as follows:

***“The Court shall have power to review its judgements, awards, orders or decrees in accordance with the Rules.”***

26. ***Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules 2024*** provides that person aggrieved by a decree or order whether appealable or not may seek a review of the judgment or ruling within a reasonable time under specific conditions. These include the discovery of new and significant evidence that could not have been presented earlier despite due diligence, the presence

of a clear mistake or error on the face of the record, the need for clarification of the judgment or ruling, or any other sufficient reason that justifies reconsideration.

27. In this instant case, the Claimant/Applicant alleges that this Honourable Court made an error of fact finding that it lacked jurisdiction to deal with the unremitted pension fund, and she is not entitled to compensation for the non-remitted loan deduction. The jurisdiction of this Honourable Court has been established under **Article 162(2) of the Constitution of Kenya 2010** and **Section 12(1) of the Employment and Labour Relations Court Act**. It is true that this Honourable Court does not have jurisdiction to deal with issues regarding pension fund as stipulated in **Section 12(1) of the Employment and Labour Relations Court Act**. The issue of pension fund this Honourable Court does not have jurisdiction to adjudicate disputes that fall squarely within the mandate of the Retirement Benefits Authority such as complaints about pension scheme management, unremitted contributions, or benefits governed by statutory pension laws. These matters

are typically handled under the Retirement Benefits Act, which provides for internal review by the RBA's Chief Executive Officer and appeals to the Retirement Benefits Tribunal. In ***Kenya Tea Growers Association & 2 others V The National Social Security Fund Board of Trustees & 13 Others [2024] KESC 3 (KLR)***, the Supreme Court clarified stating that the ELRC has jurisdiction to determine the constitutional validity of pension-related statutes such as the National Social Security Fund (NSSF) Act when those laws directly affect employment and labour relations.

28. In the Supreme Case decision of ***CHAUREMBO MUMBA & 7 OTHERS -VS- MAURICE MUNYAO & 148 OTHERS*** the court held that the proper forum for resolving pension disputes was the Retirement Benefits Authority (RBA) not the courts. The courts rejected the idea of "*optional jurisdiction*" and directed the matter be referred to the RBA Chief Executive Officer for resolution. If dissatisfied with the decision of CEO appeal should then lie to the Retirement Benefits Tribunal.

29. However, on deep introspection I agree with the Applicant that this matter is distinguishable from **Chaurembo Case** in that the instant one is squarely an employee and employer dispute. The deducted funds did not get to the Pension fund. The other case involved the **Contributors -Versus- the Trustees** of the fund.

I do concede in this case the Respondent must be called upon to pay the money it deducted from the employee and never remitted the same. In the case of **Sarah Mangoli -VS- Kenya Medical Research Institute Staff Pension Cause 559/ 2019** the court held:

***“The matter under Section 46 of the Retirement Benefits Act relate to a dispute between a member and a manager administrator, custodian or trustee of the Scheme. Such matters are handled by the Retirement Benefits Appeals Tribunals. In relation to this Claim, the Claimant’s claim relates to moneys not remitted to her pension account by the employer, the 1<sup>st</sup> Respondent. The Claimant’s claim therefore emanates from her contract of***

***employment and she avers that the employer failed to remit her pension dues to her pension scheme. The claim is therefore not a dispute about pension but about a breach in the employment contract.”***

30. The admitted amount in the Respondents’ witness statement and in the absence of any records from the Claimant/Applicant is **Kshs.1,281,341/60**. The same is now awarded to the Claimant/Applicant. The Department of Pensions Insurance indicated the same amount as the unremitted dues as per their letter dated 11<sup>th</sup> March 2024.
31. The unremitted shares of Sacco are also confirmed by Egerton University Sacco as per their document dated 7<sup>th</sup> November 2024 and so the same is awarded being **Kshs.48,578/55**.
32. The money claimed to have been overpaid to the KCB bank should if it was overpaid be refunded by the bank. The court does not find the justification of ordering that amount to be paid by the Respondent as the bank has a duty to declare overpaid moneys and refund promptly. I will not say more on that.

33. The deferred amounts on the June 2023 payslip show a total of **Kshs.1,128,047/95** which as well the court concedes should be due to the Claimant/Applicant. The same is so ordered to be paid to the claimant.
34. The court however has after very critical analysis not found the evidential proof of loan deduction amounting to Kshs.650,822/93. The same is therefore disallowed.
35. The court would like to point out that the Counsels/litigants have a duty to present very accurate support documents to the court to enable the court to make fast determination without this back and forth. Anyhow having conceded to review its judgments the court awards the underlisted to the Claimant:

- (1) Unremitted Pensions dues -  
Kshs.1,281,341/60**
- (2) Unremitted Sacco dues -  
Kshs.48,578/55**
- (3) Deferred salary -  
Kshs.1,128,047/85**
- Total -  
Kshs.2,457,968/=**

36. Parties to meet their respective costs of the application.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru this 3<sup>rd</sup> Day of October, 2025.**

**ANNA NGIBUINI MWAURE**  
**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **ELRC CAUSE NO. E004 OF 2024 RULING PAGE 18 OF 19**

**Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**