

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW MISC. APP. NO. E417 OF 2025

BETWEEN

VITALIS OMAMBIA NYACHIROAPPLICANT

AND

RETIREMENT BENEFITS APPEALS TRIBUNAL.....

.....1ST RESPONDENT

RYAN AGWATA2ND RESPONDENT

BOARD OF TRUSTEES PENSION SCHEMEMPZ CUSSONS EAST

AFRICA LTD3RD RESPONDENT

JUDGMENT

1. Through the Application dated 17th December 2025 Applicant seeks the following orders:

1) That this Application be and is hereby certified urgent and heard Exparte on priority basis in view of its urgent nature and service of the same be dispensed with in the first instance.

2) That pending the hearing and determination of the Application herein, this Honourable Court be pleased to issue orders prohibiting the 3rd Respondent from implementing the Judgment of the 1st Respondent delivered on 11th December 2025.

3) That upon the hearing and determination of this Application, this Honourable Court be pleased to issue an order of certiorari to

quash the Judgment of the 1st Respondent delivered on 11th December 2025.

- 4) That this Honourable Court be pleased to grant any other order and/or relief it may deem just and expedient to grant in the circumstances.
 - 5) That the costs of the Application be provided for.
- 2.** The Applicant argues that he married the deceased, the late Maureen Kerubo Agwata on 5th April 2014 at the SDA Nairobi Church.
 - 3.** The marriage between the late Maureen irretrievably broke down as a result of which he filed for divorce in the year 2016.
 - 4.** Before the divorce proceedings could be finalized, Maureen tragically died in a road accident on 15th April 2019.
 - 5.** After her demise, her family denied him the right to view or to participate in her funeral rites. The late Maureen's father returned the dowry paid to him and declared through his Advocates M/s Hussein Mwae that in view of the return of dowry, the family of the late Maureen had severed all the ties with him and his family.
 - 6.** Her family and in particular her father Dr. Jones Agwata, prevented him from initiating succession proceedings. The Registrar of Births and Deaths refused to provide him with a copy of her death certificate.

7. He only became aware of the Succession Cause in March 2025 upon coming across the decision of the Chief Executive Officer Retirement Benefits Authority.
8. Consequently, the deceased's family obtained Certificate of Confirmation of Grant where the 2nd Respondent was appointed as the Administrator.
9. Sometime in the year 2020, both he and the 2nd Respondent respectively submitted claims for the late Maureen's terminal benefits with the 3rd Respondent.
10. The 3rd Respondent by way of a determination rendered on 23rd October 2024 pronouncing itself as follows: -

“The marriage certificate between the deceased and Vitalis Omambia was valid at the time of her death. Even though the divorce proceedings were ongoing, there was no decree nisi or decree absolute issued by the court (none has been presented to us by the parties). Considering this the Trustees find that the marriage between the deceased and Vitalis Omambia was subsisting at the time the deceased passed away and therefore Mr. Vitalis Omambia still remains the legal husband to the deceased.

The husband Vitalis Omambia is the rightful beneficiary to the deceased terminal benefits.

The family of Ryan Agwata did not provide sufficient proof that Ryan Agwata substantially depended on the deceased before her

death and is therefore not entitled to the deceased's terminal benefits."

- 11.** The family of the late Maureen being dissatisfied with the said decision lodged an appeal with the Chief Executive Officer - Retirement Benefits Authority. This culminated in the decision rendered on 14th March 2025.
- 12.** In the said decision, the Chief Executive Officer -Retirement Benefits Authority found as follows: -

"In conclusion, considering, the unique circumstances around this matter, including-

a) The fact that the spouse had separated from the deceased for over three years.

b) Divorce proceedings were ongoing, and both parties expressed that the marriage had deteriorated significantly.

c) The fact the High Court identified and confirmed Ryan Agwata as the sole beneficiary of the deceased estate.

Rule 24 of the Scheme Rules, which allows Trustees to consider dependency whether "wholly or in part."

We find that the Trustees ought to have considered Ryan Agwata as a beneficiary, as he was partly dependent on the deceased and therefore entitled to a share of the retirements benefits of Maureen Agwata. Based on the foregoing, the Trustees are hereby directed to re-distribute Maureen's benefits and include Ryan Agwata as a beneficiary."

13. He argues that he was unaware of the Appeal and only learnt of the same at the end of March 2025 when the Chief Executive Officer - Retirement Benefits Authority's decision was sent to the 3rd Respondent who then communicated the same to my Advocates.
14. The said decision of the Chief Executive Officer -Retirement Benefits Authority was prejudicial to him as he was not given an opportunity to be heard and/or submit on his case.
15. He submits that the right to be heard is a constitutional right which he was deprived of. Consequently, he lodged an Appeal with the 1st Respondent herein against the decision of the Chief Executive Officer -Retirement Benefits Authority delivered on 14th March 2025. By way of a Judgment delivered on 11th December 2025, the 1st Respondent dismissed his Appeal.
16. In the said Judgment, the 1st Respondent ordered the 3rd Respondent to distribute the pension benefits of the deceased, the late Maureen Kerubo Agwata between Ryan Agwata and me within thirty (30) days from the date of the Judgment.
17. The 1st Respondent ordered that the benefits be allocated in the following ratio: Applicant 1% and 2nd Respondent 99%.
18. The Applicant submits that the decision of the 1st Respondent is contrary to established law. Indeed, at **Paragraphs 35, 36 and 40** of the said undated Judgment, the 1st Respondent states as follows:

“35. The deceased tried all she could to reconcile and seek for forgiveness from the Appellant but the Appellant was not ready and even when the deceased passed on the demanded refund of

the dowry barely one week after the tragic death of the deceased when her family was mourning is a clear indication that he had severed his relationship with the deceased and her family.

36. Apart from the fact that the divorce had not been concluded it is clear that there was no marriage and for all practical purposes the Appellant was only a husband on paper.

40. The Trust Deed and Rules of the scheme do not provide a situation where the spouse will be entitled to 100% of the deceased's pension and in this particular case the Appellant will be entitled to some share just as a recognition that he was the husband since the divorce petition had not been concluded but morally, he ought not to."

- 19.** The decision of the 1st Respondent was arrived at based on misleading circumstances according to him.
- 20.** The marriage between him and the late Maureen was solemnized under the provisions of the African Christian Marriage and Divorce Act Accordingly.
- 21.** According to him the only lawful method to dissolve such a marriage is through judicial proceedings culminating in the issuance of a formal decree by the Court.
- 22.** The mere return of the dowry does not constitute a valid or recognized method of dissolution certainly not after the death of one spouse. He argues that he did not ask for the return of the dowry. It is his case that it was the father of the deceased who took it upon himself to return the same to him.

- 23.** The 1st Respondent's upholding the decision of the Chief Executive Officer - Retirement Benefits Authority, the 1st Respondent has affirming that indeed, the pension or terminal benefits form part of the estate of the late Maureen Kerubo Agwata for purposes of succession which is contrary to Section 36A of the Retirement Benefits Act which expressly states: -

“Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the estate of the member for the purpose of administration and shall be paid out by the trustees in accordance with the scheme rules.”

- 24. Regulation 23 of the Retirement Benefits (Occupations Retirement Benefits Schemes) Regulations, 2000**, states that-

“The scheme rules shall provide that upon the death of a member, the benefits payable from the scheme shall be paid to the nominated beneficiary and if the deceased member had not named the beneficiary, then the trustees shall exercise their discretion in the distribution of the benefits to the dependants of the deceased member, provided that the trustees may refuse to pay the nominated beneficiary and the reasons for such refusal shall be so recorded.”

- 25.** Rule 13 of the Schedule to the PZ Cussons (E.A) Ltd Staff Provident Fund & Life Assurance Scheme reads as follows: -

“13. Treatment of Death Benefits

Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the Estate of a member for the

purpose of administration and shall be paid out by the Trustees in accordance with the scheme rules.”

- 26.** It is his case further that in the Certificate of confirmation of grant dated 20th April 2023 the 2nd Respondent is identified as the beneficiary of motor vehicle Registration Number KCP 611P, final benefits PZ Cussons East Africa Ltd and Ushuru Sacco Benefits. It is trite law that pension or terminal benefits does not form part of the estate of a deceased for purposes of succession.
- 27.** The 1st Respondent is tainted with illegality as it is inconsistent with the established legal principles and fundamental doctrines of law governing pension benefit distribution.
- 28.** The 1st Respondent’s determination departs from clear legal requirements and exceeds the scope of the enabling provisions, constituting a material error of law.
- 29.** It is the Applicant’s case that the impugned decision is therefore devoid of a lawful basis, is irrational and unreasonable and amounts to an unlawful and improper exercise of statutory power.
- 30.** The distribution direction is so illogical and disproportionate that it cannot be justified within the range of reasonable administrative action according to the Applicant.
- 31.** The decision disregards core doctrines of fairness and reasoned decision-making required of administrative authorities.

32. By failing to observe these doctrines and to articulate cogent reasons tied to applicable law the 1st Respondent acted in breach of the requirements of administrative justice.

The 2nd Respondent's Case;

33. The 2nd Respondent is the brother of the late Maureen Kerubo Agwata.

34. In response to paragraph 3 of the Supporting Affidavit is admitted, save for the fact that the Applicant filed Milimani Nullity No. 914 of 2016 seeking for annulment of the marriage citing degrees of Consanguinity and Affinity.

35. It is his case that in the Nullity Proceedings, their father Professor Jones Agwata was an Interested Party and the case against him was that he had fathered a daughter with the Applicant's sister Anna Kemunto. Further in support of the nullity proceedings, the Applicant's sister Anna Kemunto swore an Affidavit laying out facts that she was in a romantic relationship with their father while they were in high school which resulted in a daughter.

36. It is his case that these were very serious allegations that left his late sister and the family tested in very many ways.

37. It is his case that this is still very fresh and painful to them since they have never gotten any closure in this matter to this day.

38. At the time when their sister the late Maureen Kerubo Agwata died in a tragic road accident on 15th April, 2019 the nullity proceedings and or divorce had not been concluded in court according to him.

- 39.** It is under these circumstances that the family of the late Maureen Kerubo decided to conduct her final rights and memorial ceremony to the exclusion of the Applicant. He argues that while at the church during his late sister's memorial service, the Applicant's Lawyers served them with a demand letter.
- 40.** The Applicant was demanding to take part in the memorial service as her husband. He argues that his father contacted the Applicant herein for his personal bank details which he provided wherein the cash dowry was refunded.
- 41.** The Applicant also sent representatives to his rural home in Nyamira County at Kiang'eni Location and in witness of the said Chief and representatives from his family the dowry in form of cows and other physical gifts was also returned.
- 42.** According to him the Applicant was fully aware of the implications of refunding dowry under the Kisii Customary Law. He was consenting to having the late sister being buried as a single woman and not his wife.
- 43.** He argues that all the interests towards the deceased are for monetary benefits, even this Application is all about maximum benefit from the deceased in terms of money.
- 44.** He argues that the Applicant strategically avoided fighting for the burial rights and by hiding behind letters from his advocates instead of court orders buying time only to show up during succession and now for the retirement benefits which is the main issue for determination before this Honourable court.

- 45.** The Applicant has admitted in paragraph 5 of the supporting Affidavit that he was interested to file for succession as the legal husband. The Appeal to the Retirement Benefits Chief Executive Officer as provided for in the relevant laws is in form of a letter.
- 46.** He argues they were dissatisfied with the decision of the PZ Cussons Board of Trustees; there is no procedure or provision for the Applicant's participation in the said forum.
- 47.** The Chief Executive Officer of the Retirement Benefits Authority requested PZ Cussons Retirement Benefits Scheme's Board of Trustees to support their decision and supply supporting documents. Which they did and a decision was arrived at.
- 48.** It is his case further that the PZ Cussons Board of Trustees had never directly communicated to them as Maureen Kerubo Agwata's family that her husband the Applicant herein had also laid a claim on the late's benefits until when they made their final decision awarding him all of her benefits on 23rd October, 2023.
- 49.** The Chief Executive Officer's decision was simply directing the PZ Cussons Board of Trustees to redistribute the Late Maureen Kerubo Agwata's Benefits to both the Applicant and 2nd Respondent.
- 50.** Before the Board of Trustees was able to determine the percentile awards between the Applicant and the 2nd Respondent herein, the Applicant Appealed against that decision to the Retirement Benefits Tribunal.
- 51.** The decision of the 1st Respondent herein, the Tribunal rightly arrived at a just and equitable decision after carefully considering the

facts surrounding this case, the reasoning was sound and in line with the relevant laws and considered the moral factors as well.

- 52.** He argues that the analysis by the Retirement Benefits Tribunal in their judgment under paragraphs 35, 36 & 40 as contained in paragraph 13 & 14 of the Supporting Affidavit is the true position and facts as they were.
- 53.** The Applicant is put to strict proof as to which facts are misleading and or not true. He is not disputing that there was a marriage existing between his late sister and the Applicant, but that marriage was only on paper as rightly pointed out by the analysis of the Retirement Tribunal in the judgment.
- 54.** It is his case that the defamatory nullity/divorce proceedings are proof of these facts and the 1st Respondent gave a detailed analysis of the short but strained marital relationship that existed between him and the deceased.
- 55.** The intention of both parties from the divorce pleadings, was for the dissolution of the marriage, a fact which was sadly overtaken by events of my sister's untimely passing.
- 56.** He argues that his sister joined the PZ Cussons Retirement Pension scheme sometime in 2013 wherein she had nominated the Applicant who was her fiancé at the time as the beneficiary to her retirement benefits but later while the divorce process was ongoing, she removed his name. However, before she could nominate someone else, she died.

- 57.** He argues that the Applicant participated fully in the process of taking back dowry, a symbol of breaking a marriage in the Kisii Cultural Customs, and since the court divorce had been frustrated by the death of his sister, his actions are a clear indication that he was not going to bury his sister as his wife. He severed all legal and humanly ties possible in the circumstances.
- 58.** It is his case that the decision of the Chief Executive Officer and as upheld by the 1st Respondent does not in any way affirm that pension or terminal benefits form part of the estate of the Late Maureen Kerubo Agwata as argued by the Applicant.
- 59.** He argues that the Applicant is misguided because nowhere in the judgment has the 1st Respondent stated that their decision was based on the laws of succession.
- 60.** The succession in the estate of the Late Maureen Kerubo Agwata was already conducted and concluded in Milimani High Court Succession Cause No. E056 of 2022 and the Applicant did not object to the proceedings as the Late's husband or as a beneficiary.
- 61.** Rule 13 of the Schedule to the PZ Cussons (E.A) Ltd Staff Provident Fund & Life Assurance Scheme. He argues that in any event the said regulation was enacted on 1st August, 2019 whereas his sister died on 15th April, 2019. Laws do not apply retrospectively.
- 62.** It is his case that if there is any illegality, unfairness and unreasonable decision making, it would be a decision allowing the Applicant to benefit from the deceased's retirement benefits for the only reason that he holds a marriage certificate. According to him, the marriage

certificate he had tried to have dissolved by annulment in the divorce court.

Analysis and determination;

This court finds the following to be the issues for determination:

1) Whether or not the Applicant is entitled to the orders sought.

2) Who shall bear costs.

Whether or not the Applicant is entitled to the orders sought.

- 63.** The Applicant argued that he was unaware of the Appeal and only learnt of the same at the end of March 2025 when the Chief Executive Officer -Retirement Benefits Authority's decision was sent to the 3rd Respondent who then communicated the same to his Advocates.
- 64.** He argued that the said decision of the Chief Executive Officer - Retirement Benefits Authority was prejudicial to him as he was not given an opportunity to be heard and/or submit his case.
- 65.** Consequently, he lodged an Appeal with the 1st Respondent herein against the decision of the Chief Executive Officer -Retirement Benefits Authority delivered on 14th March 2025. By way of a Judgment delivered on 11th December 2025, the 1st Respondent dismissed his Appeal dated 15th April 2025. The decision of the 1st Respondent is contrary to established law according to the Applicant.

66. It was his case that the in Judgment, the 1st Respondent stated as follows:

“35. The deceased tried all she could to reconcile and seek for forgiveness from the Appellant but the Appellant was not ready and even when the deceased passed on the demanded refund of the dowry barely one week after the tragic death of the deceased when her family was mourning is a clear indication that he had severed his relationship with the deceased and her family.

36. Apart from the fact that the divorce had not been concluded it is clear that there was no marriage and for all practical purposes the Appellant was only a husband on paper.

40. The Trust Deed and Rules of the scheme do not provide a situation where the spouse will be entitled to 100% of the deceased’s pension and in this particular case the Appellant will be entitled to some share just as a recognition that he was the husband since the divorce petition had not been concluded but morally, he ought not to.”

67. The Applicant argued that decision of the 1st Respondent was arrived at based on misleading circumstances. The marriage between him and the late Maureen was solemnized under the provisions of the African Christian Marriage and Divorce Act and the only lawful method to dissolve such a marriage is through judicial proceedings culminating in the issuance of a formal decree by the Court.

- 68.** There is a question around whether the return of the dowry constitutes a valid or recognized method of dissolution after the death of one spouse.
- 69.** The 1st Respondent upholding the decision of the Chief Executive Officer - Retirement Benefits Authority, the 1st Respondent is affirming that indeed, the pension or terminal benefits form part of the estate of the late Maureen Kerubo Agwata for purposes of succession which is contrary to **Section 36A of the Retirement Benefits Act** which expressly states: -

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- 70.** Regulation 23 of the Retirement Benefits (Occupations Retirement Benefits Schemes) Regulations, 2000, states that-

“The scheme rules shall provide that upon the death of a member, the benefits payable from the scheme shall be paid to the nominated beneficiary and if the deceased member had not named the beneficiary, then the trustees shall exercise their discretion in the distribution of the benefits to the dependants of the deceased member, provided that the trustees may refuse to pay the nominated beneficiary and the reasons for such refusal shall be so recorded.”

- 71. Rule 13 of the Schedule to the PZ Cussons (E.A) Ltd Staff Provident Fund & Life Assurance Scheme** reads as follows: -

“13. Treatment of Death Benefits

Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the Estate of a member for the purpose of administration and shall be paid out by the Trustees in accordance with the scheme rules.”

72. The Applicant advanced an argument that in the Certificate of confirmation of grant dated 20th April 2023 the 2nd Respondent is identified as the beneficiary of Claim for motor vehicle Registration Number KCP 611P, final benefits PZ Cussons East Africa Ltd and Ushuru Sacco Benefits.
73. There is a question as to whether pension or terminal benefits form part of the estate of a deceased for purposes of succession. According to 2nd Respondent, the Applicant filed Milimani Nullity No. 914 of 2016 seeking for annulment of the marriage citing degrees of Consanguinity and Affinity.
74. The Applicant's sister Anna Kemunto swore an Affidavit laying out facts that she was in a romantic relationship with our father while they were in high school which resulted to a daughter.
75. There is an issue whether or not the 2nd Respondent's father contacted the Applicant for his personal bank details. There is further a question as to whether the cash dowry was refunded.
76. There is also a question as to whether or not the Applicant sent representatives to the 2nd Respondents rural home in Nyamira County at Kiang'eni Location and whether Chief and representatives

from the 2nd Respondent's family witnessed the return of the dowry in form of cows and other physical gifts was also returned.

77. There is an issue as to the implications of refunding dowry under the Kisii Customary Law, and whether it amounts to consenting to having the 2nd Respondent's late sister buried as a single woman and not his wife. There is a question as to whether the Applicant was interested in filing for succession as the legal husband.
78. The deceased PZ Cussons Retirement Pension scheme sometime in 2013, where she had nominated the Applicant who was her fiancé at the time as the beneficiary to her retirement benefits but later while the divorce process was ongoing, she removed his name. However, before she could nominate someone else, she died.
79. There is a question as to whether taking back dowry, amounts to breaking a marriage in the Kisii Cultural Customs.
80. Lord Diplock at p.316G in Hoffmann-La-Roche (F) & Co AG versus Secretary of State for Trade and Industry (1975) AC 295 was of the view that the procedure on a Judicial Review motion is unsuited to enquiries into disputed facts. Oral evidence and discovery, although catered for by the rules are not part of the ordinary stock in trade of the prerogative jurisdiction.
81. In the Supreme Court of England in the matter of an Application by **Noeleen McAleenon for Judicial Review Appellant (Northern Ireland) [2024] UKSC 31**, the court revisited this issue and held as follows:

“Judicial Review is supposed to be a speedy and effective procedure, in respect of which disputes of fact which have a bearing on the legal question to be determined by the court - that is, whether the public authority has acted lawfully - do not generally arise. A public authority is subject to a duty of candour to explain to the court all the facts which it took into account and the information available to it when it decided how to act.

*Given the nature of the legal question to be determined by the court and the duty of candour, the usual position is that a Judicial Review claim can and should be determined without the need to resort to procedures, such as cross-examination of witnesses, which are directed to assisting a court to resolve disputed questions of fact which are relevant in the context of other civil actions, where it is the court itself which has to determine those facts. In Judicial Review proceedings the court is typically not concerned to resolve disputes of fact, but rather to decide the legal consequences in the light of undisputed facts about what information the public authority had and the reasons it had for acting. (This is not to say that such procedures are not available in Judicial Review: cross examination is available and will be allowed “whenever the justice of the particular case so requires”: *O’Reilly v Mackman* [1983] 2 AC 237, 283 per Lord Diplock; but usually, given the issues which arise in a Judicial Review claim, the justice of the case does not require it)”. (Emphasis added).*

82. In Saisi & 7 others v Director of Public Prosecutions & 2 others (Petition 39 & 40 of 2019 (Consolidated)) [2023]

KESC 6 (KLR) (Civ) (27 January 2023) (Judgment) the court noted as follows:

“Be that as it may, it is the Court’s firm view that the intention was never to transform Judicial Review into to full-fledged inquiry into the merits of a matter. Neither was the intention to convert a Judicial Review court into an appellate court. We say this for several reasons. First, the nature of evidence in Judicial Review proceedings is based on affidavit evidence. This may not be the best suited form of evidence for a court to try disputed facts or issues and then pronounce itself on the merits or demerits of a case. More so on technical or specialized issues, as the specialised institutions are better placed to so. Second, the courts are limited in the nature of reliefs that they may grant to those set out in Section 11 (1) and (2) of the Fair Administrative Actions Act. Third, the Court may not substitute the decision it is reviewing with one of its own. The court may not set about forming its own preferred view of the evidence, rather it may only quash an impugned decision. This is codified in Section 11(1) (e) and (h) of the Fair Administrative Action Act. The merits of a case are best analyzed in a trial or on appeal after hearing testimony, cross-examination of witnesses and examining evidence adduced. Finally, as this Court held in the case of Kenya Vision 2030 Delivery Board v. The Commission on Administrative Justice, the Attorney General and Eng. Judah Abekah, SC Petition 42 of 2019; [2021] eKLR, in matters involving the exercise of judgment and discretion, a public officer or public agency can only be directed to take action; it cannot be

directed in the manner or the particular way the discretion is to be exercised.” (Emphasis added).

83. Upon looking at the issues and the questions that this court has identified above, I am of the view that they demand of this court to inquire into disputed facts.

84. This Court sitting as a Judicial Review court cannot conduct a merit analysis.

Disposition:

85. The Application lacks merit.

Order:

This suit is hereby dismissed with costs.

Dated, signed and delivered at Nairobi this 13th day of March 2026.

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J. M. CHIGITI (SC)
JUDGE