



REPUBLIC OF KENYA



KENYA LAW
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**Local Authorities Provident Fund Board v County Government of Narok & another
(Cause E008 of 2022) [2025] KEELRC 625 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 625 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E008 OF 2022
AN MWAURE, J
FEBRUARY 28, 2025**

BETWEEN

LOCAL AUTHORITIES PROVIDENT FUND BOARD CLAIMANT

AND

COUNTY GOVERNMENT OF NAROK 1ST RESPONDENT

**COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE COUNTY
GOVERNMENT OF NAROK 2ND RESPONDENT**

RULING

Introduction

1. The Claimant/Applicant filed a Notice of Motion dated 24th May 2024 seeking for the following orders that:
 1. The Honourable Court be pleased to review and set aside the Ruling dated 31st July 2023 and all consequential orders.
 2. The Honourable Court be pleased to reinstate the Claim dated 4th March 2022 for hearing on merit.
 3. The costs of this application be borne by the Respondents.

Claimant/Applicant's case

2. The application is supported by the affidavit of Lilian Opondo, the Claimant/Applicant's advocate.
3. The Claimant/Applicant avers that the cause was instituted by way of Statement of Claim dated 4th March 2022 seeking an order compelling the Respondents to remit outstanding statutory



contributions, totalling Kshs.1,012,296,749.05, deducted from the employees of the 1st Respondent but did not remit to the Claimant as intended.

4. The Claimant/Applicant avers that it further sought an order for future statutory deductions from the 1st Respondent's employees to be remitted in accordance with section 8(3) of the [Local Authorities Provident Fund Act](#), Cap 272, together with costs and interest.
5. The Claimant/Applicant avers that the Respondent filed a notice of Preliminary Objection on 20th May 2022 challenging jurisdiction of this Honourable Court on the basis that it lacked jurisdiction to entertain the entire suit according to section 12 of the [Employment and Labour Relations Court Act](#).
6. The Claimant/Applicant avers that the Honourable Court allowed the Respondent's Preliminary Objection and struck out the entire claim due to the fact the court lacked jurisdiction.
7. The Claimant/Applicant avers that the claim enforced legal, statutory, and/or contractual obligations between the Claimant and the 1st Respondent, as the court exclusively handles disputes arising from the employer-employee relationship.
8. The Claimant/Applicant avers that there was judgment that was delivered by the Supreme Court in Kenya Tea Growers Association & 2 others V The National Social Security Fund Board of Trustees & 13 others [2024] KESC 3 (KLR) which at paragraph 86 affirmed the jurisdiction of the Employment and Labour Relations court over the disputes concerning the pension matters for current employees.
9. The Claimant/Applicant avers that it is seeking a review of the ruling since this Honourable Court has jurisdiction over pension-related disputes concerning current employees.
10. The Claimant/Applicant avers that the dispute with the Respondent with unremitted pension contributions by the 1st Respondent for its current employee, whom, despite deducting the dispute sums for their salaries, the Respondent has failed, declined and/or refused to remit them to the Claimant thereby impeding the Claimant from fulfilling its obligations to the 1st Respondent.
11. The Claimant/Applicant avers that the Respondents will not suffer any prejudice, loss or damage should the orders herein be granted, however, failure to grant will result in irreparable damage.
12. The application was disposed of by way of written submissions. However, the Respondent changed its advocates from Kemboy Law Advocates to the Office of County Attorney, Narok. The Notice of change of advocates dated 26th November, 2024 was filed.

Claimant/Applicant's submissions

13. The Claimant/Applicant submitted that review is provided for under Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 which states 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.”
14. The Claimant/Applicant also relied on Section 16 of the *Employment and Labour Relations Court Act* which provides as follows:

“The Court shall have power to review its judgments, awards, orders or decrees in accordance with the Rules.”
15. The Claimant/Applicant submitted that the review is on the grounds that there are sufficient reasons to review the ruling dated 31st July 2023. The Claimant/Applicant relied on the case of Kenya Engineering Workers Union V Steel Structures Limited, Kenya Building, Construction, Timber and Furniture Industries Employees Union (Interested Party) [2020] eKLR cited the case of Nasibwa Wakenya Moses V University of Nairobi and another [2019] eKLR the court held that an application for review can be permitted for any other "sufficient reason," a phrase interpreted to be similar in nature to the other reasons mentioned in Order 45 Rule 1. This interpretation was further explained in Sadar Mohamed V Charan Singh and another, where the court noted that "any other sufficient reason" for review refers to grounds akin to the other two (such as an error on the face of the record or the discovery of new facts).
16. In Republic V Disciplinary Tribunal ex-parte Apollo Mboya [2019] eKLR the court stated as follows:

“A court can review a judgment for any other sufficient reason. In the case of Sadar Mohamed vs Charan Signh and Another [1963] EA 557 it was held that any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter. Mulla in the Code of Civil Procedure (writing on Order 47 Rule 1 of the Civil Procedure Code of India), (the equivalent of our Order 45 Rule 1), states that the expression 'any other sufficient reason'...means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out..., would amount to an abuse of the liberty given to the tribunal under the Act to review its judgement.”
17. The Claimant/Applicant submitted that the Honourable Court (Nderitu J) struck out the claim as it did not have jurisdiction to entertain the claim.
18. The Claimant/Applicant submitted that this court has jurisdiction to hear and determine the issues in dispute following the Supreme Court’s findings in the judgment in Kenya Tea Growers Association & 2 others V The National Social Security Fund Board of Trustees & 13 Others(supra) the ELRC has the authority to assess the constitutional validity of a statute when it is directly related to employment or labour disputes, especially those involving employer-employee relationships. While pension issues are connected to an individual’s employment, once they retire and become a pensioner, the ELRC’s jurisdiction does not cover disputes regarding their pension.
19. The Claimant/Applicant submitted that even if there was no new important evidence, mistake, or error on the record, or need for clarification, there is sufficient reason to review the ruling as the Supreme Court affirmed the jurisdiction of the Employment and Labour Relations Court to hear pension-related disputes, provided the individuals involved are still employed.
20. The Claimant/Applicant also submitted that the dispute on the unremitted contributions affecting employees who are still employed, the court has jurisdiction. The Claimant/Applicant submitted that



it has fulfilled the threshold for reviewing and settling the ruling thus urged this Honourable Court to allow the application as prayed.

21. The Respondents did not file any written submissions.

Analysis and determination

22. The court has considered the application together with submissions on record, the issue of determination is whether the application is merited.

23. The Employment and Labour Relation Court has new rules came into operation vide legal notice no. 133 of 2024 on 16th August 2024 known as the Employment and Labour Relations (Procedure) Court Rules 2024. For review now falls under Rule 74(1) which reads as follows:

- (1) 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.

24. In *National Bank of Kenya Limited V Ndungu Njau* [1997] KECA 71 (KLR) the Court of Appeal held as follows:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

25. In this instant case, the Honourable Court (Nderitu J) concluded this matter by giving his ruling stating that the court lacks jurisdiction to handle the matter as the Claimant/Applicant is seeking to enforce a legal, statutory, or contractual obligation between it and the 1st Respondent and he thus struck out the cause.

26. The Claimant/Applicant is seeking to review the Ruling of the Judge because of a decision delivered by the Supreme Court being *Kenya Tea Growers Association -VS- NSSF Trustees* (Supra). Upon perusing the pleadings, this Honourable Court has noted that there is no new evidence, no error made, no clarification needed or any other sufficient reason. The grounds the Applicant has raised are legal grounds. In the event this Honourable Court reviews the ruling of Nderitu J, it would take up the mantle of the appellate court. The Claimant/Applicant had the option to appeal to the appellant court.

27. Flowing from the foregoing, the application dated 24th May 2024 is not merited and is disallowed.

28. There will be no orders as to costs.



29. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH DAY OF FEBRUARY, 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 15th March 2020 and subsequent directions of 21st 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 Section 1B of the 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

