



REPUBLIC OF KENYA



**KENYA LAW**  
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**Abwaku v Attorney General (Employment and Labour Relations Petition  
E181 of 2023) [2025] KEELRC 642 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 642 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E181 OF 2023  
MN NDUMA, J  
FEBRUARY 27, 2025**

**BETWEEN**

**SOLOMON AKADAKE ABWAKU ..... PETITIONER**

**AND**

**THE HON ATTORNEY GENERAL ..... RESPONDENT**

**RULING**

1. The petition dated 18/9/2023 was filed by the Petitioner on 22/9/2023 seeking the following prayers:-
  - i. A declaration that the Respondent's said action and/or inaction complained of, offend, violate, transgress upon the Petitioner's rights to fair labour practice.
  - ii. A declaration that the Petitioner is entitled to payment of the pension after working for Government of Kenya for 27 years.
  - iii. General damages
  - iv. Costs of the petition to be awarded to the Petitioner.
  - v. Any other relief that the Honourable Court may deem just and fair to grant.
2. The Respondent filed a Notice of Preliminary Objection challenging the jurisdiction of the court to hear and determine the petition based on the Supreme Court decisions in the case of Albert Chaurembo Mumba and 7 others (sued on their own behalf and on behalf of predecessors and successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme versus Maurice Munyao and 148 others (suing on their own behalf and on behalf of the Plaintiff and other members/ beneficiaries of the Kenya Ports Authority Pensions Scheme [2019] eKLR where it was held that Employment and Labour Relations Act does not confer upon the Employment and Labour Relations Court power to determine issues between Pension Schemes and its members.



3. A careful consideration of the petition as pleaded shows that the suit before court is between an employee and his employer.
4. The Cause of action arises from refusal by the Government of Kenya, represented by the Attorney General to authorize payment of pension to the Petitioner upon resignation from employment by a letter dated 3/4/2017 after serving the Government in various ranks culminating in the rank of District Commissioner at Nyatike District of the then Nyanza Province.
5. The Petitioner who was employed by the Government on 11/9/1990 as a District Officer (Cadet) and posted as District Officer II had served the Government of Kenya as a civil servant for a period of 27 years as at the time of resignation.
6. The mandatory pension age of a civil servant is 50 years which the Petitioner attained in the year 2019.
7. The dispute here is not between an employee and any pension fund but is one between an employee and his employer. Authority to process payment of pension comes from the employer represented by the Respondent herein.
8. This matter is easily distinguishable from the case of Albert Chaurembo Mumba (Supra) decided by the Supreme Court of Kenya.
9. The court having considered the non-contested facts set out in the petition and submissions by both parties finds this Preliminary Objection to be without merit and dismisses the same accordingly. The petition to proceed to hearing on the merits.

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Khalwale for Petitioner

Ms. Mochoge for Respondent

Mr. Kemboi – Court Assistant

