



REPUBLIC OF KENYA



KENYA LAW
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**Kirera & 549 others v Central Bank of Kenya (Cause E588 of 2024)
[2025] KEELRC 988 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 988 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E588 OF 2024
AK NZEI, J
MARCH 28, 2025**

BETWEEN

DANIEL MBAYA KIRERA & 549 OTHERS CLAIMANT

AND

CENTRAL BANK OF KENYA RESPONDENT

RULING

1. The Claimants herein, pleaded to be former employees of the Central Bank of Kenya, the Respondent herein, sued the Respondent vide an undated Memorandum of Claim filed in this Court on 22nd July, 2024. The Claimants pleaded:-
 - a. That prior to the Claimants' official date of retirement (1st March, 1997), they (the Claimants) were permanent and pensionable employees of the Respondent, entitled to pension benefits on attainment of mandatory retirement age.
 - b. That between 1st March, 1997 and 2010, the Claimants were on retirement awaiting payment of deferred pension pursuant to obligations imposed upon the Respondent by the terms of contracts of employment, Central Bank of Kenya Pension Fund Trust Deed, Central Bank of Kenya Pension Rules and Regulations, the Pension Act (Cap. 189 Laws of Kenya), and Central Bank of Kenya Board of Directors Instructions.
 - c. That in 2010, the deferred pension matured, but the Respondent declined liability for its payment and a legal dispute ensued.
 - d. That in the ensuing suit, a party not privy to the contract impersonated the Central Bank of Kenya and unprocedurally took part in the entire proceedings of the three Courts i.e the RBA Tribunal, the Employment and Labour Relations Court and the Court of Appeal, lack of locus standi notwithstanding; making the process non-justiciable.



- e. That evidence (available) shows that the Respondent was entrusted with the Claimants' deferred pension on 1st March, 1997 for safe custody until the Claimants attained mandatory retirement age. That the evidence discharges the burden of proof that the Respondent is liable for honouring [the] pension agreements.
 - f. That membership to the Pension Fund and entitlement to pension is affirmed by the [available] evidence to be absolute and unconditional.
 - g. That the Claimants have unsuccessfully implored the Respondent to resolve the matter amicably.
2. The Claimants sought the following reliefs:-
- a. A declaration that the Respondent is in wholesale breach of its contractual obligations to the Claimants.
 - b. An order of specific performance compelling the Respondent:-
 - i. to immediately effect payment of the Claimants' pension benefits due to them from the date of their mandatory retirement, plus interest at court rates.
 - ii. immediate reinstatement of the Claimants into the Pension Scheme as provided for in the contractual documents.
 - iii. any other remedy the Court deems fit, just and equitable to grant.
 - iv. Costs of the suit.
3. On 12th November, 2024, the Respondent filed an evenly dated Notice of Preliminary Objection to the entire suit on grounds:-
- a. That this Court lacks jurisdiction to hear the claim herein, as Jurisdiction vests with the Retirement Benefits Authority.
 - b. That the suit is incompetent for failing to comply with Rule 23(2) and (3) of this Court's Rules.
 - c. That issues raised in the claim herein are res judicata, having been heard and determined by the Retirement Benefits Authority in the first instance and by the following Judicial bodies on first and subsequent appeals:-
 - (i) Retirement Benefits Appeals Tribunal in Appeal No. 4 of 2010 (George Omondi & 209 Others – vs – Retirement Benefits Authority and Central Bank Pension Fund).
 - (ii) Nairobi ELRC Appeal No. 5 of 2014 (Formerly HCCA No. 5 of 2014) George Omondi & 210 Others – vs – Retirement Benefits Appeal Tribunal, Central Bank Pension Fund & Retirement Benefits Authority.
 - (iii) Court of Appeal at Nairobi Civil Appeal No. 204 of 2017 (George Omondi & 210 Others – vs – Retirement Benefits Appeals Tribunal, Central Bank of Kenya Pension Fund & Retirement Benefits Authority).
4. The Claimants filed Response to the Preliminary Objection dated 18th November, 2024, and stated:-
- a. That the suit herein is not res judicata as the prior suits involved Central Bank of Kenya Pension Fund, a distinct legal entity from the Central Bank of Kenya and that as such parties are not



the same. That the overriding principle as established in *Dunlop Pneumatic Tyres Co. Ltd – vs – Selfridge & Co. Ltd* [1915] AC 847 is that only parties to a contract can sue or be sued.

- b. That on jurisdiction, Article 162(2)(a) of *the Constitution* of Kenya 2010 establishes this Court (the ELRC) as the appropriate forum for disputes relating to employment and labour relations; and that the dispute herein arises directly from an employer-employee relationship between the Claimants and the Respondent and falls within the Court’s Jurisdiction.
 - c. That the Claimants complied with Rule 23(2) and (3) of this Court’s Rules by filing the necessary affidavit of authorization alongside the statement of claim. That members of the class suit herein are spread across various counties in Kenya and diaspora, and they, having retired 27 years ago and some having passed on, necessitating efforts to contact their next of kin, and the process having presented significant and logistical and administrative challenges; the ongoing activities of compiling their names, addresses and other necessary details as required by the Rule should not be a ground to prevent the suit from proceeding to hearing.
 - d. That in the event of procedural inadequacy, the Court to be guided by Article 159(2)(d) of *the Constitution*, which mandates Courts to prioritize substantive justice over procedural technicalities as underscored by the Supreme Court of Kenya in *Mumo Matemu – vs – Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR.
5. Written submissions were filed by the Respondent in support of the Preliminary Objection; while the Claimants filed written submissions in opposition of the same.
 6. In my view, issues of law that present for determination are as follows:-
 - a. Whether this Court has jurisdiction to entertain, to hear and to determine the Claimants’ suit herein.
 - b. Whether the suit herein is *res judicata*.
 - c. Whether the Claimants’ suit, as drawn/presented, is competent.
 7. On the first issue, it is evident from the Claimants’ Memorandum of Claim that the dispute herein relates to alleged deferred but subsequently matured pension benefits which the Claimants contend are payable to them by the Respondent pursuant to terms of the Claimants’ contracts of employment, Central Bank of Kenya Pension Fund Trust Deed, Central Bank of Kenya Pension Rules and Regulations, the Pension Act (Cap. 189) Laws of Kenya and Central Bank Board of Directors Instructions.
 8. It is also clear from the Claimants’ pleadings that the said pension dispute has previously been the subject matter in proceedings before the Retirement Benefits Tribunal, the Employment and Labour Relations Court and the Court of Appeal. The Claimants are shown, in the documents filed in this Court, to have been the Appellants in Retirement Benefits Appeals Tribunal appeal No. 4 of 2010 and the Appellants in a subsequent appeal filed in this Court against the Retirement Benefits Appeals Tribunal’s decision, being appeal No. 5 of 2014. In making a finding that it did not have Jurisdiction to entertain an appeal from a decision of the Retirement Benefits Appeals Tribunal, this Court (Nderi Nduma, J) pronounced itself as follows:-

“This Court . . . is not persuaded that it has jurisdiction to entertain an Appeal from a decision of the Retirement Benefits Appeals Tribunal established under Section 47 of the *Retirement Benefits Act*, Cap. 197 of the Laws of Kenya. To hold otherwise would be resulting (sic) to



innovation and craft since the Act does not expressly confer such appellate Jurisdiction on the High Court or the Employment and Labour Relations Court.

The Appeal is therefore dismissed with costs to the Respondent.”

9. Aggrieved by this Court’s aforesaid decision delivered on 28th August, 2015, the Claimants appealed to the Court of Appeal vide the said Court’s Civil Appeal No. 204 of 2017. In determining the appeal, the Court of Appeal stated as follows:-

“23. The RBA is established under Section 3 of the Act. It is charged with the Responsibility of regulation, supervision and promotion of retirement benefits schemes, protection of the interests of members and sponsors of retirement benefits sector and the development of the retirement benefits sector, among other functions. As already noted, it is to the RBA that the Appellants initially complained about amendments of Trust Deed and Rules of the Pension Fund and that the retirement benefits paid to them were not properly calculated.

24. Under Section 46 of the Act, any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian or trustee of a scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer of RBA with a view of ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or the Act under which the scheme is established.

25. Section 48 of the Act then provides for appeals to the RBA Appeals Tribunal by any person aggrieved by a decision of the RBA or of the Chief Executive Officer of RBA. The RBA Appeals Tribunal is established under Section 47 of the Act and its powers set out under Section 49 of the Act. . . . There is no provision in the Act, for escalation of disputes beyond the RBA Appeals Tribunal to the ELRC.

26. As stated by Nyarangi J.A in the decision of this Court in the often cited case of Owners of the Motor Vessel “Lillian S” –vs – Caltex Oil (Kenya) Ltd [1989] KLR 1:

“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 down tools in respect of the matter before it the moment it holds the opinion that it is without Jurisdiction.”

10. The Court of Appeal further stated as follows:-

“28. In the absence of any provision conferring Jurisdiction to the ELRC to entertain appeals from decisions of the Appeals Tribunal, in effect a third right of appeal, we agree with the conclusion reached by the learned Judge of the ELRC upholding the Preliminary Objection that was taken by the 3rd Respondent. There is support for this in the recent case of Staff Pension Fund & Kenya Commercial Bank Staff Retirement (DC) Scheme 2006 and another – vs – Ann Wangui & 524 Others where this Court, differently



constituted, dealt with this very issue, and after analysing the law and past decisions concluded:-

“From the above analysis, we hold that the law does not provide an appeal from the decision of the Retirement Benefits Appeals Tribunal and such right of appeal can neither be implied nor inferred to confer Jurisdiction to ELRC or the High Court to entertain an appeal. It follows that the appeal filed by the Respondent is incompetent.”

11. In the present case, the Claimants appear to have innovated what I may refer to as a tact by them to by-pass this Court’s and the Court of Appeal’s foregoing decisions. They have done so by filing the present suit against the Respondent despite the Retirement Benefits Appeals Tribunal’s decision on the dispute herein in the said Tribunal’s Appeal No. 4 of 2010, in which the Claimants were the Appellants. The Tribunal’s decision is shown, in the documents filed in this Court, to have been delivered on 11th September, 2013. It matters not that the Respondent as sued herein was not a party in the said appeal. The dispute herein has clearly gone full cycle, and cannot be re-invented vide a purported suit, regardless of the fact that the parties named by the Claimants in the aforementioned appeals appear to have been conveniently dropped/omitted in the present suit.
12. This Court has no Jurisdiction to entertain a suit regarding a dispute falling within the Jurisdiction of the RBA and the Retirement Benefits Appeals Tribunal, and which the said Tribunal has heard and determined. As stated by the Court of Appeal in Appeal No. 204 of 2017 aforesaid, there is NO provision in the *Retirement Benefits Act* (RBA) for escalation of disputes beyond the Retirement Benefits Appeals Tribunal; which, pursuant to Section 47 of the RBA, exercises the powers of a subordinate Court of the first class in conducting hearing of appeals before it.
13. In Samuel Kamau Macharia & another – vs – Kenya Commercial Bank Limited & 2 Others [2012] eKLR, the Supreme Court of Kenya stated as follows:-

“A Court’s Jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise Jurisdiction as conferred by *the Constitution* or other written law” and “cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law . . . Whether a court of law has jurisdiction to entertain a matter before it . . . goes to the very heart of the matter, for without Jurisdiction, the Court cannot entertain any proceedings.”
14. Having made a finding that this Court has no jurisdiction to entertain the suit herein, delving into the 2nd and the 3rd issues on whether the suit herein is res judicata and whether the suit is incompetent as drawn and filed will be a mere academic exercise. As already stated in this Ruling, Jurisdiction is everything, and without it, the Court cannot make one more step. This Court must down tools regarding the suit herein.
15. Having considered written submissions filed for and by the parties herein, I uphold the Preliminary Objection dated 12th October, 2024 to the extent that this Court lacks Jurisdiction to entertain the suit herein. The suit is hereby struck off with no order as to costs.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH 2025

AGNES KITIKU NZEI

JUDGE



ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Daniel Kirera 1st Claimant in person

Mr. Karuga for the Respondent

