



**Menya v Retirement Benefits Authority & 2 others (Employment and Labour Relations
Judicial Review E031 of 2024) [2025] KEELRC 1397 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1397 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E031 OF 2024
HS WASILWA, J
MAY 14, 2025**

BETWEEN

CHRISTOPHER SIRENGO MENYA APPLICANT

AND

RETIREMENT BENEFITS AUTHORITY 1ST RESPONDENT

UNILEVER KENYA LIMITED 2ND RESPONDENT

ZAMARA LIMITED 3RD RESPONDENT

RULING

1. The Applicant filed an undated Notice of Motion seeking orders that: -
 1. spent
 2. pending the hearing inter parties and determination of this instant application the Honourable Court do hereby order the 2nd & 3rd Respondents to show detailed information on calculation how Petitioner's Provident Fund dues Kshs. 65,693 was arrived at.
 3. the Petitioner is entitled to unpaid salary June 1994 with house allowance, shift allowance, annual leave allowance, with accrued interest.
 4. the Honourable Court be pleased to issue an Order for 3 months salary in lieu of Notice of Termination of Employment.
 5. the Honourable Court issue Orders restraining the Respondents from interfering with the Petitioner's constitutional rights.
 6. the 2nd Respondent pay the costs for the Petition.



7. pending the hearing and determination of the Application, the Honourable Court do order the 2nd Respondent to show detailed calculations on how the Petitioner's provident fund dues of Kshs 65,692/= were arrived at since the Petitioner's loan was Kshs 30,000/=
8. the 2nd Respondent give details of computerized information of the Petitioner's contributions for the following:
 - a. Sum of Sacco savings and dividend
 - b. Sum of Monthly loan repayment.
 - c. Correct loan balance.
9. any other order this Honourable Court may deem fit to grant.

Applicant's Case.

2. The Applicant avers that vide a letter dated 18th August 2021, the 2nd Respondent attached his retirement benefits dues of Kshs. 65,692 without detailed calculations to show how it arrived at the figure.
3. The Applicant avers that vide a letter dated 3rd February 2022, the 1st Respondent pronounced that his dispute in respect to the provident funds attached by the 2nd Respondent stating it has no jurisdiction and declined to handle it.
4. It is the Applicant's case that his termination was verified and signed by various department managers of the 2nd Respondent in 2000 whereas the 1st Respondent was established in 29th November 1997, therefore, the 1st Respondent's refusal to handle the dispute is null and void.
5. It is the Applicant's case that his appeal against the 1st Respondent's decision was dismissed by the Tribunal on 14th December 2023, however, the judgment was made outside its jurisdictions as the Applicant was not informed he has not exhausted the mandatory dispute resolution mechanism hence premature to invoke the courts jurisdiction in violation of Section 9(2) of the Fair Administrative Act.

1st Respondent's Case.

6. The 1st Respondent avers that it is established under the Retirement and Benefits Act to regulate and supervise the establishment and management of retirement benefits schemes; and to protect the interests of members and sponsors of retirement benefits sector.
7. The 1st Respondent avers that upon written request of a scheme member, its Chief Executive Officer has jurisdiction under Section 46 of the *Retirement and Benefits Act* to review the decision of the manager, administrator, custodian or trustees of the scheme with a view to 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.
8. The 1st Respondent avers that the Applicant was an employee of the 2nd Respondent and a member of the Uniafric Provident Fund from 1st February 1990 to 20th June 1994.
9. It is the 1st Respondent's case that it received a complaint from the Applicant regarding an alleged debt owed to him by his former employer. However, upon review of the complaint, it realised it fell outside its jurisdiction set under Section 46 of the Act.



10. The 1st Respondent avers that it informed the Applicant vide a letter dated 3rd February 2022 that it lack jurisdiction to proceed. Aggrieved by its decision, the Applicant appealed at the Retirement Benefits Appeals Tribunal.
11. The 1st Respondent avers that the appeal was dismissed by the Retirement Benefits Appeals Tribunal vide its judgment dated 14th December 2023.
12. It is the 1st Respondent's case that it is misjoined as the reliefs sought do not fall within its jurisdiction and the alleged cause of action arose in 1994 before the enactment of the Retirement Benefits Act.
13. The 1st Respondent avers that the application is incurably defective as the Applicant has not applied for or obtained leave to commence judicial review proceedings; no administrative decision has been disclosed to warrant judicial review and no grounds for judicial review have been advanced; and the orders sought are incapable of being granted in judicial review proceedings.
14. The 1st Respondent avers that the Applicant is time barred under the Limitation of Actions Act as the alleged cause of action arose in 1994.

2nd Respondent's Case

15. The 2nd Respondent avers that the Applicant is its former employee who left employment on 20th June 1994 and his terminal due were paid and outstanding loan recovered from his terminal benefits as per the policy. The Applicant was issued with a certificate of service and contribution termination form.
16. The 2nd Respondent avers that vide a letter dated 18th August 2021, it informed the Applicant that the alleged terminal benefits of Kshs. 65,000 were deducted to clear the outstanding loan with the company. Aggrieved by the contents the Applicant filed a complaint with the 1st Respondent which declined to hear it; and the Applicant filed an appeal which was dismissed.
17. The 2nd Respondent avers that the Applicant did not file any review against the decision of the 1st Respondent within the statutory period of 6 months and this Court lack jurisdiction to entertain the suit.
18. The 2nd Respondent avers that the Applicant's cause of action arose on 20th May 1994 therefore the application was filed outside the limitation period. Any alleged claim for payment of salary or notice is fatally defective for being barred under Section 4(1)(a) of the Limitation of Actions Act which is applicable to employment contracts in 1994.

3rd Respondents' Case.

19. The 3rd Respondent avers that it is currently the 2nd Respondent's pension administrator vide its appointment in the year 2008.
20. It is the 3rd Respondent's case that the circumstances giving rise to the dispute occurred in the year 1994, therefore, it has no knowledge of the facts giving rise to the suit as it occurred decades before its contractual relationship with the 2nd Respondent.
21. The 3rd Respondent avers that none of the pension records or calculations relating to the Applicant was transferred by the 2nd Respondent and/or its previous pension administrators to the 3rd Respondent during the handover process.
22. The 3rd Respondent avers that there has never been any direct or indirect relationship between it and the Applicant that would entitle the Applicant to directly sue or seek remedy from it.



1st Respondent's Submissions.

23. The 1st Respondent submitted on two issues: Whether this matter falls within the jurisdiction of a Judicial Review Court; and whether the applicants are entitled to the orders sought in the application.
24. On the first issue, the 1st Respondent submitted that the application involves issues surrounding unpaid salary, house allowance, shift allowance, leave allowance and salary in lieu of notice of termination of employment. The prayers sought are not in the nature of Judicial Review writs of Mandamus, Certiorari and Prohibition. If at all this was a Judicial Review Application which it is not, those are the only appropriate orders and/or prayers a party can seek.
25. The 1st Respondent submitted that Sections 7(2) and 9(1) & 9(2) of the *Fair Administrative Action Act* provides that in respect to judicial review, a Court is tasked with determining whether an administrative action was procedurally proper and it is not concerned with evaluating the merits of the case as an employment court would.
26. The 1st Respondent further submitted that judicial review focuses on whether the decision-making process was legal, fair, and within jurisdiction, and whether the administrative body complied with statutory and constitutional requirements, therefore, the Applicant cannot confer on this court power it does not have.
27. It is the 1st Respondent's submission that this court lacks jurisdiction to entertain this matter. It relied on the Supreme Court decision in *Samuel Kamau Macharia and another v. Kenya Commercial Bank Limited and 2 others* [2012] eKLR that couched the inherence of jurisdiction in the following explicit terms;
- “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. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
28. On the second issue, the 1st Respondent submitted that contrary to Order 53 Rule 1 of the *Civil Procedure Rules* which provides the mandatory term that applications for mandamus, revision, prohibition and certiorari to be made only with leave, the Applicant has not applied for, nor obtained leave to commence Judicial Review proceedings. It placed reliance on *Republic v Retirement Benefits Authority Ex parte Alex Anyona Momanyi & 6 others* [2021] eKLR where in discussing the issue of leave it was held;
- “The starting point would be Order 53 (1) of the Civil Procedure Rules which states as follows:
1. No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rule.
- This rule leaves no doubt that the grant of leave is a precondition to filing a substantive motion for the prerogative orders of mandamus, prohibition or certiorari; without such leave the substantive application cannot be entertained.”
29. The 1st Respondent submitted that the Applicant has not attached the decision sought to be reviewed through a Judicial Review. The Applicant has also not included the administrative body whose decision should be reviewed as one of the Respondents. It relied on the Court of Appeal decision in



Aluochier v Independent Electoral and Boundaries Commission & 17 others (Civil Appeal E176 of 2022) [2022] KECA 952 (KLR) (29 July 2022) which held that;

“In addition, however, the learned Judge observed that the applicant had also failed to annex the decision sought to be reviewed. Failure on the appellant’s part to annex the impugned decision to the affidavit in support of his application meant that he submitted nothing to be reviewed. The learned Judge so concluded in view of the fact that the appellant’s affidavit in support did not contain any annexures relating to the decision which the applicant sought to rely upon. In the absence of marked and sealed annexures, there was nothing for the court to consider on review. In effect, the application alone stood bare and devoid of substance for review. Even had the appellant followed the correct procedure, that glaring omission would have rendered his Motion defective and fatally incompetent....A question then arises as to whether the appellant’s Motion as characterized by the foregoing procedural defects would find cure in Article 159(2) (d) of the Constitution, which mandates courts and tribunals to administer justice without undue regard to technicalities of procedure. It would not. We agree with the learned Judge that Article 159(2) (d) of the Constitution could not come as a saving grace to the applicant. That Article cannot be used to circumvent mandatory rules of procedure laid down in statute law.”

30. The 1st Respondent submitted that it is misjoined in this suit as the reliefs sought do not fall within its jurisdiction set out in Section 46 of the *Retirement Benefits Act*. Further, the alleged cause of action arose in 1994, before the enactment of the *Retirement Benefits Act*. It could not entertain any claim in relation to retirement benefits, from the Appellant as it was not mandated to as the *Retirement Benefits Act* does not act retrospectively.

3rd Respondent’s Submissions.

31. The 3rd Respondent submitted that the events giving rise to these proceedings occurred between 1990 and 1994, having been appointed as the 2nd Respondents Pension Administrator in 2008; the Applicant has never been a member of the 2nd Respondent’s provident fund at the time when the 2nd and 3rd Respondents began their contractual relationship, the Applicant cannot claim to exercise any rights flowing from the said contractual relationship.
32. The 3rd Respondent submitted that although it has no direct knowledge of the facts giving rise to these proceedings, it is doubtful that the Court has jurisdiction to hear and determine this matter.
33. The 3rd Respondent submitted that the under Sections 7(ii) and 9(i) of the Fair Administrative Actions Act, the role of the Court in a Judicial Review is to interrogate and review the manner in which an administrative decision was reached rather than to determine grievances between private citizens.
34. It is the 3rd Respondent’s submission that although this matter has been filed as a judicial review, it is not clear what administrative decision the Applicant seeks to review as the remedies sought are in the nature of Employment related remedies. It relied on the Court of Appeal case of *Municipal Council of Mombasa vs Republic & Umoja Consultants Limited*, Nairobi Civil Appeal No. 185 of 2001, [2002] eKLR.
35. The 3rd Respondent submitted that this matter is improperly before the judicial review division. The matters complained of herein are private disputes concerning the employment relationship between the Applicant and the 2nd Respondent and are not administrative decisions whose process has been challenged.



36. I have examined all the arguments and submissions of the parties herein. The Applicant has chosen to file this Judicial Review application asking this court to compel the Respondents to supply certain information which he allege the Respondents made in contravention of his rights. He also sought orders before this court to compel payments of other dues he avers he is entitled to in lieu of notice of termination.
37. The Respondents argued that this court lack the requisite jurisdiction to handle this matter as the application is wrongly before court, the applicant having not sought leave of this court to institute Judicial Review proceedings and also having not annexed the evidence he wants this court to review.
38. I have looked at the manner the applicant approached this court. It is indeed true that the Applicant approached court by filing a certificate of urgency with a supporting affidavit seeking orders herein.
39. The Applicant did not file any application for leave to file this Judicial Review application as mandated under order 53(1) of the CPR as submitted by the 1st Respondent herein. This order is couched in mandatory term and the failure by the Applicant to seek leave of this court before filing the Judicial Review application is in breach of the law.
40. In the circumstances of the case, I find the application improperly before court and I proceed to strike it out accordingly. There will be no orders of costs.

READ, DELIVERED AND SIGNED THIS 14TH DAY OF MAY, 2025.

HELLEN WASILWA

JUDGE

