



Nganga v Laptrust (Umbrella) Retirement Fund Board of Trustee & another (Employment and Labour Relations Cause 367 of 2018) [2025] KEELRC 1296 (KLR) (8 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1296 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 367 OF 2018**

HS WASILWA, J

MAY 8, 2025

BETWEEN

ARTHUR NJOROGE NGANGA CLAIMANT

AND

**LAPTRUST (UMBRELLA) RETIREMENT FUND BOARD OF
TRUSTEE 1ST RESPONDENT**

NAIROBI WATER & SEWERAGE COMPANY LIMITED 2ND RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 19th March 2018 on grounds that the Respondent unlawfully retained a big portion of his retirement benefits. He prays for judgment against the Respondent for: -
 - a. A declaration that the underpayment of the Claimant's retirement benefit including withheld salary underpayments, salary arrears in breach of the increments as contained in the Collective Bargaining Agreements for 2005, 2012 and 2015 respectively was unconstitutional, illegal, unlawful, malicious and null and void.
 - b. The Respondents be ordered to pay the Claimant the unlawfully withheld retirement as tabulated in paragraph 15 above all amounting to a total sum of Kshs. 8,804,085.36/-.
 - c. General damages
 - d. Costs of this cause.
 - e. Interest of the cause at court rates.
 - f. Any other relief which the court deems fit, just and expedient to grant.



Claimant's Case

2. The Claimant states that he was employed by the Nairobi City Council on 9th July 1998 as a labourer II at a starting salary of Kshs. 2,900 and was subsequently promoted to an Artisan at a monthly salary of Kshs. 91,787.
3. The Claimant states that she was transferred to the 2nd Respondent on 22nd April 2004 alongside other employees working in the department of water and sewerage of Nairobi City Council.
4. The Claimant states that he belongs to the 1st Respondent's retirement scheme which is the trust responsible for paying pension to him including employee and employer contributions.
5. It is the Claimant's case that he held the position of an artisan scale 18; and upon transfer to the 2nd Respondent company he was placed under scale 7 until his retirement.
6. The Claimant states that when he retired on 18th September 2017, his pension was undercalculated and since then he has been in communication with the 1st Respondent which insisted on paying the undercalculated pension instead of the actual.
7. The Claimant states that between September 2005 and October 2010, the 2nd Respondent unlawfully and/or illegally transferred his pension contribution from the 1st Respondent to Madison Insurance Company, however, vide a court order dated 23rd January 2009 in ELRC Cause No. 520 of 2006, the same was transferred back and as a result he suffered damages in terms of pension entitlement.
8. The Claimant states that the salary increments contained in the CBAs for the years 2005, 2012 and 2015 was never paid to him by the 2nd Respondent who retained his salary arrears.
9. It is the Claimant's case that in calculating pension payable the Respondents failed to factor in the annual increment and salary underpayment during service. The 1st Respondent calculated his pension based on his salary for the year 2008 instead of the current salary at the date of his retirement.
10. The Claimant states that his claim is for withheld pension in lump sum, underpayment, salary arrears based on increments contained in the CBAs for 2005, 2012 and 2015, annual salary increments and amount of pension held by Madison amounting to Kshs. 8,804,085.36.

1st Respondent's Case

11. The 1st Respondent filed a witness statement dated 29th January 2025 sworn by Susan Jobaye, an employee of CPF Financial Services Limited, the administration company appointed by the trustees of the 1st Respondent to administer the pension scheme on their behalf.
12. It is the 1st Respondent's case that the Claimant is not its member but is a member of Local Authorities Pension Trust (Laptrust DB Scheme) which is distinct from the 1st Respondent.
13. The 1st Respondent states that the Claimant joined and contributed to Laptrust DB Scheme on 19th October 1998 and ceased being a member between 2005 until 2010 when he rejoined.
14. The 1st Respondent states the 1st Respondent and Laptrust DB Scheme are not privy to employment related issues raised by the Claimant.
15. The 1st Respondent states that the calculation of pension benefits under Local Authorities Pension Trust is guided by a pension formula provided for under Local Authorities Pension Trust Rules, 2007 as amended by Local Authorities Pension Trust (Amendment) Rules, 2010 ([*Legal Notice No. 136 of 2010*](#)).



16. The 1st Respondent states that the Claimant has not been prejudiced in any way or his benefits undercalculated as alleged and the Claimant has not demonstrated any breach or violation of the law committed by the 1st Respondent in calculating his retirement benefits.

2nd Respondent's Case

17. In opposition, the 2nd Respondent filed a Memorandum of Response to the Claimant's claim dated 12th November 2019.
18. The 2nd Respondent avers that the Claimant was among the employees it absorbed from the City Council of Nairobi in 2004 after an agency agreement for the transfer of operational assets and agency agreement signed with the City Council of Nairobi.
19. The 2nd Respondent avers that it engaged the Claimant as an artisan, Job Scale 7 on a permanent and pensionable contract.
20. The 2nd Respondent avers that between September 2005 and October 2010, it was remitting pension of all its pensionable employees to Madison Insurance which was managing its pension scheme at the time.
21. The 2nd Respondent states that some of its pensionable employees objected to remission of their pension to Madison Insurance and moved the court in HCC No. 520 of 2006 Solomon Boit & Others Versus Nairobi Water & Sewerage Company & Another to which a consent order was entered allowing the pensionable employees to join a pension scheme of their choice.
22. The 2nd Respondent states that some of its employees opted to remain with Madison Insurance whereas others including the Claimant chose to return to the 1st Respondent's pension scheme. Upon issuance of the court order, it has never failed to remit the pension to the employees' preferred pension.
23. The 2nd Respondent states that the Claimant was an unionizable employees, he enjoyed salary increments pursuant to various CBAs signed with the union in 2012 and 2015; accordingly, with an increase in salary, the pension and employer deductions also increased and it continued to remit the new rates.
24. The 2nd Respondent states that it cannot be liable for any pensionable funds as its role is not to calculate the amount of pension payable but its limited to deduction and remittance.
25. It is the 2nd Respondent's case that the dispute herein being on retirement benefits, there is an alternative dispute remedy that exists to resolve the dispute before seeking a court's determination and therefore this court lacks jurisdiction to resolve this matter.

Evidence in Court

26. The Claimant (CW1) adopted his witness statement dated 19th March 2018 as his evidence in chief and produced his list of documents dated 19th March 2019 as his exhibits 1-12.
27. During cross-examination, CW1 testified that the calculation of his pension was based on his 2008 payslip instead of the 2018 payslip when he retired.
28. CW1 testified that he does not know the formula used to calculate his pension or where the 1st Respondent got his payslip.
29. The Respondents witness (RW1) Susan Ndubai stated that she a Benefits Manager at the 1st Respondent.



30. RW1 adopted her witness statement dated 29th January 2025 as her evidence in chief.
31. During cross examination, RW1 testified that the Claimant claimed his benefits in 2017 which was computed and he was paid Kshs 1.248 million, however, there is no evidence of this in court.
32. RW1 testified that the pension contributions are paid by both the employee and employer and the 2nd Respondent had been making the contribution to the scheme from 1997 to when the member exited; from the contribution received, the entitlement was Kshs. 1,926,730.
33. The Respondent's second witness, George Otieno Oketch (RW2) adopted his witness statement dated 9th September 2020 as his evidence in chief and produced his filed documents as his exhibits 1-6.
34. During cross-examination, RW2 testified that the substance of HCC No. 520 of 2006 was that the city council was not remitting statutory deductions; and vide the consent entered, the Court ordered that the 2nd Respondent was to pay Kshs 159 million and due to some wrongdoing's penalties of Kshs. 250 million.
35. RW2 testified that the Claimant was paid his pension by Laptrust in lumpsum, however, Laptrust did not share the same with the Respondent.
36. RW2 testified that it communicated the Claimant's retirement to the pension scheme and he did not come back to the 2nd Respondent.
37. During re-examination, RW2 testified that the 2nd Respondent is a different entity from the City Council of Nairobi; and it was settled by the court in 2009 that City Council of Nairobi was to pay Kshs 59,235,637 whereas the 2nd Respondent was to pay 50,721,150 which the 2nd Respondent paid.

Claimant's Submissions

38. The Claimant submitted that 2nd Respondent made unauthorized transfer of his pension contributions to Madison Scheme for the period between September 2005 - October 2010 occasioning him great loss. Additionally, the 2nd Respondent failed to provide details with respect to its implementation of the Collective Bargaining Agreements for 2005, 2012 and 2015.
39. The Claimant submitted that the contributions made between himself and the 2nd Respondent amounted to Kshs. 1,913,321 and no lumpsum was paid to him; the 2nd Respondent did not avail any documentary evidence to contradict this.
40. In respect to transfer of his pension scheme to Madison Insurance, it is the Claimant's submission Madison was an inferior scheme and the transfer occasioned him loss in terms of lost earnings for the five year period.
41. The Claimant further submitted that the transfer was made without involving him or his representatives and it took the intervention of the court in its order/decreed made in Nairobi High Court Civil Suit No. 520 of 2006 ordering the 2nd Respondent to pay Kshs. 159,235,637 and its predecessor 250,721,150 in penalties.
42. The Claimant submitted that the 1st Respondent failed to justify the computations made in deriving the computation of Kshs. 10,940.71 as is the monthly pension amount paid to the Claimant; despite the 1st Respondent being well versed with the matters in issue having been a successor to Laptrust.
43. The Claimant submitted that legally, the bare minimum amount payable to him was (Kshs. 74,012.67 * 218.58) divided by 480, which translates to Kshs. 33,703.51 before the adjustment in subject Legal Notice of Kshs. 2010.



44. It is the Claimant's submission that he is entitled to payment of at least Kshs. 22,762.80 per month for underpayment of this pension from October 2008 plus interest for the 76 months (from October 2008 – February 2025). This translates to Kshs. 1,729,972.80 before charging interest which should be based on court rates of 12% per annum and factoring in annual increment as may have been ordered by law. All future payments should be based on the new values.

1st Respondent's Submissions

45. The 1st Respondent submitted on three issues: whether this court has jurisdiction to hear and determine this suit; whether the 1st Respondent has capacity to sue and be sued; and whether the Claimant is entitled to the reliefs sought.
46. On the first issue, the 1st Respondent submitted that this court lacks the requisite jurisdiction to determine this matter and has been held, jurisdiction is everything without it a court has no powers and where the court has no jurisdiction there is no need to continue the proceedings. It relied on Owners Of The Motor Vessel "Lillian S v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR).
47. The 1st Respondent submitted that the [*Retirement Benefits Act*](#) is a legislation that establishes the Retirement Benefits Authority that regulates, supervises and promotion of the retirement benefit schemes.
48. The 1st Respondent submits that Section 46 the [*Retirement Benefits Act*](#) gives aggrieved members of a scheme the leeway to launch their complaint to the Chief Executive Officer before exercising its right to approach the tribunal established under Section 47 of the Act. The CEO's jurisdiction is to determine disputes between trustees, managers, custodians and members of the scheme is provided by statute, therefore, members are expected to exhaust this option first before preferring an appeal to the Retirement Benefits Appeals Tribunal.
49. It is the 1st Respondent submission that the instant suit is a dispute between a member of the scheme and the alleged administrators of the scheme which is governed by the [*Retirement Benefits Act*](#). The Act provides for an internal dispute resolution mechanism where the parties in dispute can be heard and determined before they seek redress in a court of law; and under Section 48(2) of the Act provides that either party may appeal to the tribunal.
50. It is the 1st Respondent's submission that the Claimant has not exhausted the procedure provided for under the doctrine of exhaustion as required under section 9(2) of the [*Fair Administrative Action Act*](#) which are lodging a complaint with the CEO as stipulated under Section 46 of the [*Retirement Benefits Act*](#) and pursuing an appeal to the Retirement Benefits Appeals Tribunal under Section 47.
51. On the second issue, the 1st Respondent submitted that they are prejudiced because they do not hold any funds, contributions, records, accounts and/or information that relates to the Claimant. The Claimant has not made any contributions to the 1st Respondent because he is not a member of the scheme and he has not proved that he is a member.
52. The Claimant is a member of Laptrust DB Scheme whereas the 1st Respondent is established as an irrevocable trust under the Trust Deed and Rules registered under the [*Retirement Benefits Act*](#), Cap 197 thus established in a totally different way from Laptrust DB Scheme.
53. The 1st Respondent submitted that by nature of its establishment, it is an irrevocable trust vested in and managed by a board of trustees, therefore, it has no legal personality and cannot sue or be sued under its name in any legal proceedings.



54. On the last issue, the 1st Respondent submitted that the Claimant has not led any evidence to establish the formula he believes is correct that would result his actual pension. On its part, the 1st Respondent's witness laid out the formula under the Local Authority Pension Trust Rules, 2007 and amended Legal Notice Number 136 of 2010 which guided Laptrust define Scheme (DB) where the Claimant was a member as follows:

Gross Pension = Pensionable Salary x Contributory Service x Accrual Fraction"

55. It is the 1st Respondent's submission that the formula introduced by was applied correctly to the payment of the Claimant's pension. Further, it has a legal basis and justifiable reason to vary the calculation formula embodies in a valid scheme rules.

2nd Respondent's Submissions

56. The 2nd Respondent states that the Claimant avers that the 2nd Respondent failed to effect salary increments pursuant to CBAs for 2005, 2012 and 2015. It is the 2nd Respondent's submission that the suit herein filed in 2018 makes the disputed unpaid salary statute barred by dint of Section 89 [sic] of the *Employment Act* which states that: 'Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.'

57. The 2nd Respondent submitted that the Claimant has not particularised in any way or form the total amount underpaid. It submitted that any claim of underpayment is a special damage which must be specifically pleaded and proven; reliance was made to AHA African Safaris Limited v Panal Pina Airflo Limited [2022] KEHC 15746 (KLR) where the Court held:

“There is no denial that the amount pleaded for the unexpired period was in the form of special damages. In this regard, the law is settled that a claim for special damages must not only be specifically pleaded, it must be strictly proved with as much particularity as circumstances permit. (See Capital Fish Limited v Kenya Power and Lighting Company Limited [2016] eKLR).”

58. The 2nd Respondent submitted that the Claimant's claim does not fall within the jurisdiction of this Court as per Section 12 of the ELRC dispute which does not cite pension dispute within this Court's jurisdiction.

59. It is the 2nd Respondent's submission that the Claimant being dissatisfied with the amount paid to him by the 1st Respondent, he should have lodged a complaint with the CEO of the Retirement Benefits Authority as provided under Section 46(1) and 48(1) of the *Retirement Benefits Act*, which states:

“46. Appeals to the Chief Executive Officer

1. Any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer 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.”



48. Appeals to the Tribunal

1. Any person aggrieved by a decision of the Authority or of the Chief Executive Officer under the provisions of this Act or any regulations made thereunder may appeal to the Tribunal within thirty days of the receipt of the decision.”

60. The 2nd Respondent further relied on the decision in *Chrisopher Warui v Office of the Auditor General & another* [2021] KEELRC 1366 (KLR) where the Court held:

“The fact that his case is about pension dues and the binding decision of the Supreme Court clearly demonstrate that this a matter is not for this Court. Having found the preliminary objections have grounding and given that in addition, the claim was filed in excess of 3 years and therefore was also stale as at the Claimant had retired 5 years prior to the institution of the suit, I find and hold that the suit herein is devoid of merit and is accordingly struck out.”

61. I have examined all evidence and submissions of the parties herein. My 1st consideration in this matter is whether this court has jurisdiction to handle this matter. The respondents submitted that this court has no jurisdiction to handle this matter. Indeed case law cited and the Supreme Court of Kenya in *Kenya Tea Growers NSSF and Others KESC 42(KLR)*, the learned judges held that this court has no jurisdiction to handle pension matters. That being the case and this matter having emanated from calculation of pension dues of the claimant, I do return a verdict that this court has no jurisdiction to handle the same. The claim is struck out accordingly with no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH OF MAY, 2025.

HELLEN WASILWA

JUDGE

