



**Sirengo v Retirement Benefits Authority & 2 others (Judicial Review  
E031 of 2024) [2024] KEELRC 13449 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13449 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW E031 OF 2024  
HS WASILWA, J  
DECEMBER 18, 2024**

**BETWEEN**

**CHRISTOPHER SIRENGO ..... APPLICANT**

**AND**

**RETIREMENT BENEFITS AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**UNILIVER KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**ZAMARA ACTUARIES, ADMINISTRATORS AND CONSULTANTS LTD**

**WRONGLY SUED AS ZAMARA LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Preliminary Objection before this Court has been raised by the 3<sup>rd</sup> Respondent on the following grounds:
  - i. The Honourable Court lacks jurisdiction to hear and determine the suit as the claimant has not exhausted his statutory remedies accorded to him under the [Retirement Benefits Act](#).
  - ii. The suit is fatally defective for having been filed contrary to the provisions of Section 48 of the [Retirement Benefits Act](#).
  - iii. The suit is fatally defective for being time-barred and having been filed contrary to the provisions of Section 4(1)(a) of the [Limitation of Actions Act](#).
  - iv. The proceedings herein commenced by way of a Notice of Motion Application contravene the mandatory provisions of:
    - a. Section 5 of The [Employment and Labour Relations Court \(Procedure\) Rules](#) Legal Notice 146 of 2016, which requires that the statement of claim issued pursuant to the



Labour Relations Act (Cap. 233) be signed by the authorized representative of the party referring the labour dispute to the Court.

- b. Section 7 of The Employment and Labour Relations Court (Procedure) Rules Legal Notice 146 of 2016, which mandates that a party wishing to institute judicial review proceedings must do so in accordance with Section 8 and 9 of the Law Reform Act (Cap. 26) and Order 53.
  - v. The Notice of Motion Application has not been commenced as required, by a Statement of Claim or Petition.
2. The 3<sup>rd</sup> Respondent submits that the present suit has been commenced through un procedural means and that it would be an abuse of the Court process and a travesty of justice if this Honourable Court entertains the application or fails to strike it out.
  3. For the reasons above, the 3<sup>rd</sup> Respondent prays that the claim be struck out with costs.
  4. I have examined all the averments of the parties herein. The ex parte applicant herein filed his application on the 19<sup>th</sup> July 2024. The application was filed under certificate of urgency and brought through a Notice of Motion supported by a supporting affidavit deposed to by the applicant and dated the same day of 17<sup>th</sup> July 2024 Attached to the application is a copy of a judgement from RBA Appeals Tribunal dated 14<sup>th</sup> December 2023 which is an indication that the applicant had actually appealed the decision of the RBA which had dismissed his application.
  5. The applicants in the P.O before me have faulted the ex parte applicant for filing the JR application without exhausting the statutory remedies provided for under the RB Act They also aver that the application is time barred.
  6. Under Section 48 of the Retirement Benefits Act, any person aggrieved by a decision of the Authority or its Chief Executive Officer has the right to appeal to the Tribunal within thirty days of receiving the decision. Additionally, in the event of any dispute between a person and the Authority regarding the exercise of powers conferred upon the Authority by the Act, either party may appeal to the Tribunal in the manner prescribed.
  7. There is indeed an indication that the applicant indeed filed his appeal before the RBA Appeals Tribunal and therefore the assertion that he didn't exhaust the provisions of section 48 of the RBA is found without merit.
  8. As concerns the issue that the application is time barred what is before me is a JR application and not a normal employment claim. That being the case the issue of the matter being time barred is neither here nor there and which will be handled within the main application.
  9. This Court finds that the Preliminary objection before me is without merit and is dismissed accordingly.

Costs in the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18<sup>TH</sup> DAY OF DECEMBER, 2024.**

**HELLEN WASILWA**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

**HELLEN WASILWA**

**JUDGE**

