



REPUBLIC OF KENYA



**KENYA LAW**  
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**Local Authorities Provident Fund Board v County Government of Tharaka Nithi & another (Cause E015 of 2021) [2023] KEELRC 542 (KLR) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 542 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU**

**CAUSE E015 OF 2021**

**ON MAKAU, J**

**MARCH 3, 2023**

**BETWEEN**

**THE LOCAL AUTHORITIES PROVIDENT FUND BOARD ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF THARAKA NITHI ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF FINANCE OFFICER, THARAKA NITHI COUNTY**

**GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The claimant brought this suit on April 26, 2021 seeking the following reliefs;
  - a. An order compelling the Respondent to remit the statutory deductions from its employees to the claimant, the outstanding contributions amounting to Kshs 220,996,280.87 as at April 16, 2021.
  - b. Cost of the suit.
  - c. Interest on (a) and (b) at Court Rates.
2. The respondents filed a Joint Memorandum of Response on January 12, 2023 contending that on April 28, 2022, they recorded a consent settlement on the principal claim at Kshs 16,289,754.60 payable by six instalments. Further they averred that the only outstanding issue is whether the claimant is entitled to interest on the said principal sum which they denied. Therefore, the prayed for the suit to be dismissed with costs.
3. The parties' attempt to settle the outstanding issue failed to yield any fruit and they proceeded to dispose of the same by written submissions.



## Submissions

4. The claimant submitted that section 9 of the [Local Authorities Provident Fund Act](#) provides that a local authority shall deduct pension contribution from its employees and pay the same to the Fund within the time prescribed by the Fund board. It was further submitted that Regulation 7(k) of the [Retirement Benefits \(Individual Retirement Benefit Schemes\) Regulations](#) provides that every scheme shall have rules providing for interest chargeable on unremitted contributions, among other things.
5. It was further submitted that the respondent admitted that it failed to remit Kshs 16,289,754.60 between April 30, 2013 and March 31, 2021. Therefore, it prayed for compensation by way interest from the date of filing the suit amounting to Kshs 202,399,167.80. For emphasis *Vimalveji Shah v Chemafrica Limited* [2012] eKLR where the court awarded interest from the date of filing suit to the plaintiff for a debt owed.
6. The Respondent admits that the principal claim for the unremitted pension contributions was admitted and settled by consent. However, it submits that the [Local Authorities Provident Fund Act](#) does not entitle the claimant to any interest on the unremitted pension contributions as sought herein. Further, it submitted that the claimant has not shown what prejudice it has suffered as a result of the non-remittance of the said contributions. Finally, it submitted that the claimant just sat waiting for remittances and failed to write letters to demand for the same in order as to claim interest to claim interest in bad faith.

## Analysis

7. The relevant provision of the law in this dispute is section 53A of the [Retirement Benefits Act](#) which states that;
  1. “Where an employer, having with the agreement of an employee who is a member of a scheme, made a deduction from the employee’s emoluments for remittance to the scheme, fails to remit the deduction within fifteen days of the deduction, the scheme may, after giving such employer not less than seven days’ notice, institute proceedings for the recovery of the deduction.
  2. A notice under subsection (1) shall be in writing and copied to the Authority, and shall:
    - a. require the employer to pay the sum deducted to the scheme within seven days of the notice; and
    - b. inform the employer that if he fails to pay such sum before the expiration of the notice, proceedings for the summary recovery of the sum shall be filed in court without further reference to him.
  3. Any sum which is the subject of proceedings for summary recovery under this section shall attract a compound interest at the rate of three percent per month.
  4. Without prejudice to any proceedings instituted under the provisions of this section, a person who refuses or fails to comply with a notice given to him under subsection (1) commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or in the case of a natural person, to imprisonment for a term not exceeding three years, or to both.
  5. Where an offence under subsection (4) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in that subsection be liable to a further fine of one thousand shillings for every day or part thereof during which the offence continues.”



8. The above provisions gives a pension scheme the option to file suit to recover unremitted pensions deductions. However before filing the suit, the Pension Scheme has the following obligation to fulfil:
  - a. Shall give a written notice to the defaulter.
  - b. The notice shall be copied to the Retirement Benefits Authority.
  - c. The notice shall require the defaulter to pay the sum deducted within 7 days of the notice.
  - d. The notice shall inform the employer that if he fails to pay before the expiry of the notice, summary recovery proceedings of the sum shall be filed in court without further reference to him.
9. The claimant has not proved that it served the respondent with the notice contemplated in section 53A. Consequently, the claim for compound interest under that section must fail. A party cannot benefit from an express provision of law when he has failed to comply with the same, like in this case.
10. In its submissions, the claimant has avoided submitting on the claim for compound interest under section 53A of the *Act* and sought the interest on the principal at court rates from the date of filing the suit. There is no dispute that as at the time of filing the suit the respondent had failed to remit a total of Kshs 16,289,754.60 to the claimant and a consent judgment was entered in favour of the claimant. Therefore, I awarded the claimant interest at court rate, on the principal sum paid, from the date of filing the suit to the date when the payment was made. Since both parties have succeeded in their respective cases, each party will bear its own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 3RD DAY OF MARCH, 2023.**

**ONESMUS N. MAKAU**

**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> April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N. MAKAU**

**JUDGE**

