



**Onyando v Teachers Service Commission & another (Cause
E226 of 2023) [2023] KEELRC 2553 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2553 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E226 OF 2023
L NDOLO, J
OCTOBER 19, 2023**

BETWEEN

JAPHETH N. ONYANDO CLAIMANT

AND

TEACHERS SERVICE COMMISSION 1ST RESPONDENT

DIRECTOR OF PENSIONS 2ND RESPONDENT

RULING

1. The subject of this ruling is the Preliminary Objection raised by the 2nd Respondent by notice dated 8th May 2023.
2. The substance of the Objection is that this Court lacks jurisdiction to entertain and determine pension disputes as per the holding by the Supreme Court of Kenya in *Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others* [2019] eKLR.
3. In his response to the Preliminary Objection dated 22nd May 2023, the Claimant states that under Article 162(2)(a) of *the Constitution* of Kenya, 2010 and Section 12(1) of the *Employment and Labour Relations Court Act*, this Court has jurisdiction to hear and determine the claim.
4. The Claimant asserts that the dispute herein relates to non-payment of his retirement benefits and is between him and the Teachers Service Commission as an employer.
5. The Claimant's case is that the decision in *Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others* (supra) dealt with determination and resolution of disputes among pensioners or members, beneficiaries and the trustees of a pension scheme.
6. He states that there is no dispute between him and a pension scheme; rather, his dispute is with the Teachers Service Commission under whose instructions, the Director of Pensions continues to withhold his retirement benefits.



7. My reading of the decision in the *Albert Chaurembo Case* (supra) reveals that what the Supreme Court was called upon to adjudicate was the jurisdiction of the courts to entertain disputes arising from pension schemes in light of the dispute resolution mechanism established under the *Retirement Benefits Authority* (RBA) Act.
8. Making reference to Section 46(1) of the *RBA Act*, the Supreme Court rendered itself as follows:

“A reading and interpretation of the provisions of section 46(1) poses no difficulty and leaves no doubt that the section requires that any member, beneficiary or dependents of the Scheme who is aggrieved or dissatisfied by any decisions made by a manager, administrator or trustees of the Scheme while exercising their powers under the provisions of the relevant Scheme Rules or the Act under which the Scheme is established, may if he or she wishes make a written request to the CEO to review such decisions with a view to ensuring that such decisions are in accordance with the provisions of the relevant Scheme Rules or the Act under which the Scheme is established and above all lawful.”
9. Looking at the pleadings before this Court, the subject of the dispute emerges as the decision taken by the Teachers Service Commission that the Claimant’s pension be withheld on account of alleged misappropriation of government funds by the Claimant. In my view, this case falls within the purview of an employment relationship and is distinguishable from the decision in *Albert Chaurembo* (supra) on which the Preliminary Objection is premised.
10. The Preliminary Objection is therefore overruled with costs in the cause.
11. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF OCTOBER 2023

LINNET NDOLO

JUDGE

