



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 6 OF 2020

IN THE MATTER OF ALLEGED THREAT AND CONTRAVENTION OF ARTICLES 27(1) & (2),

30, 41, 43, 47(1) & (2), 50(1) AND 232(1) OF THE CONSTITUTION

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT NO. 17 OF 2012

AND

IN THE MATTER OF THE EMPLOYMENT ACT

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS RETIREMENT SCHEME ACT, 2019

(SECTIONS 52(1),(2) & (3), 53, 54, 55 AND 56)

AND

IN THE MATTER OF THE RETIREMENTS BENEFITS ACT NO. 3 OF 1997

BETWEEN

CHRISTINE SONGA.....PETITIONER

VERSUS

COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE,

COUNTY GOVERNMENT OF KAKAMEGA.....1st RESPONDENT

COUNTY GOVERNMENT OF KAKAMEGA.....2nd RESPONDENT

LOCAL AUTHORITIES PENSION TRUST (LAPTRUST).....3rd RESPONDENT

AND

LOCAL AUTHORITIES PROVIDENT FUND (LAPFUND).....1st INTERESTED PARTY

COUNTY GOVERNMENTS RETIREMENTS SCHEME.....2nd INTERESTED PARTY

RULING

1. Christine Songa (the Petitioner) serves as the Kakamega Branch Secretary, Kenya Government Workers Union (the Union).

2. For a long time, the Petitioner and other members of the Union were members of the Local Authorities Provident Fund (Lapfund).
3. In 2019, the Kenya County Governments Retirement Scheme Act, No. 21 of 2019, was enacted, and it came into force on 7 October 2019.
4. The Act repealed the Local Authorities Provident Fund Act, the Local Authorities Pension Trust Rules, 2007 and the Laptrust (Umbrella) Retirement Fund Trust Deed and Rules. The Act transferred all funds and assets of these 3 Funds to County Governments Retirement Scheme.
5. The County Government of Kakamega started remitting contributions from the Petitioner and other members of the Union to the County Governments Retirement Scheme around November 2019.
6. On 13 February 2020, the Petitioner instituted these legal proceedings alleging that the action by the County Government of Kakamega violated her constitutional rights.
7. The Petitioner sought the following remedies:
 - (i) A declaration that the Respondents actions are contrary to the provisions of the Constitution Article 27, 41, 43(1)(d) & (e), 47, 50 and 232 and infringes on the rights of the Petitioner and co-workers by unilateral remittance to the 3rd Respondent without their consent.
 - (ii) A mandatory order directed at the 1st and 2nd Respondents to stop remittances of the Petitioners and her co-workers' pension contribution to the 3rd Respondent without their consent and to remit the same to the 1st Interested Party pending transition to the 2nd Interested Party.
 - (iii) A mandatory order directed at the 3rd Respondent to transfer all Petitioner's and her co-workers' pension contributions remitted to it by the 1st and 2nd Respondents to the 1st Interested Party with whom they have a contract.
 - (iv) An order directed at the Respondents to comply with section 52, Part VI Sections 54, 55, 56 and 57 of the County Governments Retirements Scheme Act, No. 21 of 2019.
 - (v) That costs of the Petition be borne by the Respondents.
8. At the same time, the Petitioner filed a Motion under a certificate of urgency seeking conservatory orders.
9. The 1st and 2nd Respondents filed Grounds of opposition to the Motion and a Notice of Preliminary Objection to the Petition on 4 March 2020.
10. On the same day, these 2 Respondents filed a Motion seeking that the Petition be stayed pending the hearing and determination of Nairobi Petition No. 213 of 2019, *Okiya Omtatah Okoiti v the County Governments Retirement Scheme & Ors*.
11. Still, on the same day, the Local Authorities Pension Trust Fund filed a Motion seeking an order that it be struck out from the proceedings.
12. The Court issued directions on the applications on file on 4 March 2020, and the parties filed and exchanged affidavits.
13. However, on 11 March 2020, the Petitioner filed an amended Motion substituting the Local Authorities Pension Trust Fund with Registered Trustees, Local Authorities Pension Trust Fund.
14. Due to COVID19, the next time the parties appeared before the Court was on 16 November 2020.
15. The Court directed that pleadings in Nairobi Petition No. 213 of 2019, *Okiya Omtatah Okoiti v the County Governments Retirement Scheme & Ors*, be filed to enable it to give further directions.
16. The Court was later informed that there were other Petitions pending in Nairobi where similar questions had been raised (see Nairobi Petition No. 230 of 2019, *Local Authorities Pensions Trust Board of Trustees & Ar v the Attorney General & Ors* and Nairobi Petition No. 222 of 2019, *Kenya County Government Workers Union & Ors v Board of Trustees of Local Authorities Provident Fund & Ors*).
17. After hearing brief oral submissions, the Court directed the parties to file and exchange submissions.
18. The following were filed:
 - (i) 3rd Respondents submissions on 18 February 2021.
 - (ii) 1st Interested Party's submissions on 15 February 2021.

(iii) 1st and 2nd Respondents submissions on 8 February 2021.

(iv) Petitioner's submissions on 25 January 2021.

19. The Court has considered the record.

20. The gravamen of the case advanced by the Petitioner is that her consent and that of similarly situated employees were not received before they were transitioned into the County Governments Retirement Scheme contrary to the requirements of sections 53, 54, 55 and 56 of the County Governments Retirement Scheme Act.

21. Section 55 of the Act provides:

Transition of closed funds to the Scheme

55(1) The members of the Local Authorities Provident Fund and Laptrust (Umbrella) Retirement fund shall be transitioned into the Scheme.

(2) The funds, assets and other property, movable and immovable, which were immediately before the commencement date, were held by or on behalf of the Local Authorities Provident Fund and Laptrust (Umbrella) retirement fund shall vest in the Scheme.

22. Among the remedies sought in Nairobi Petition No. 213 of 2019, *Okiya Omtatah Okoiti v the County Governments Retirement Scheme & Ors* were:

An order permanently prohibiting the Respondents and anybody howsoever handling workers' pension funds from transferring their workers (employees) members and benefits from existing schemes (Laptrust, Lapfund and CPS) to the County Governments Retirement Scheme (CGRS) during the five year transition period and until the Scheme is fully operationalised.

23. In Nairobi Petition No. 222 of 2019, *Kenya County Government Workers Union & Ors v Board of Trustees of Local Authorities Provident Fund & Ors*, among the reliefs sought is:

A declaration that the nature of the County Governments Retirement Scheme as a state corporation as created under the impugned Act contravenes the Retirement Benefits Act.

24. In Nairobi Petition No. 230 of 2020, *Local Authorities Pensions Trust Board of Trustees & Ar v the Attorney General & Ors*, the Petitioners seek an order declaring the County Governments Retirement Scheme Act null and void.

25. The Petitioner herein is challenging a decision taken by the Respondents on the basis of section 55 of the County Governments Retirement Scheme Act, albeit under the guise that the contributing workers were not consulted.

26. The Court may not make a finding either way without delving into the validity of the section, considering that the action by the County Government of Kakamega appears to be based on a statutory provision and it is debatable whether consent of the Petitioner was required.

27. The validity, interpretation and/or application of the section and indeed sections 53, 54 and 56 of the Act is already under consideration in Petitions filed earlier in Nairobi.

28. From the above, it is clear to the Court that this Petition and the 3 other Petitions in Nairobi are anchored on the validity of the County Governments Retirement Scheme Act.

29. In order to avoid conflicting or inconsistent findings, it is the view of the Court that this Petition should be heard by the same Court which is seized of the Nairobi Petitions.

30. The Court, therefore, directs that this Petition be placed before the Principal Judge for further directions.

Delivered through Microsoft teams, dated and signed in Kisumu on this 26th day of May 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Petitioner Otieno, Yogo, Ojuro & Co. Advocates

For 1st and 2nd Respondents Shitsama & Co. Advocates

For 3rd Respondent Mwaniki Gachoka & Co. Advocates

For 1st Interested Party Sheikh & Co. Advocates

Court Assistant Chrispo Aura