



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 37 OF 2018**

*(Formerly Nairobi High Court Judicial Review No. 85 of 2018)*

**Before Hon. Lady Justice Maureen Onyango**

**IN THE MATTER OF THE RETIREMENT BENEFITS ACT, 1997**

**AND**

**IN THE MATTER OF THE RETIREMENT BENEFITS (TRIBUNAL) RULES 2010**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE ACT**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE RULES 2010**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF THE RETIREMENT BENEFITS APPEALS TRIBUNAL**

**AND**

**IN THE MATTER OF TRIBUNAL APPEAL NO. 8 OF 2010**

**ELIAS MAINA MURUGI AND 133 OTHERS.....APPELLANTS**

*VERSUS*

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

**NATIONAL BANK OF KENYA STAFF**

**RETIREMENT BENEFITS SCHEME.....2<sup>ND</sup> RESPONDENT**

**NATIONAL BANK OF KENYA STAFF PENSION**

**FUND REGISTERED TRUSTEES..... 3<sup>RD</sup> RESPONDENT**

**BETWEEN**

**NATIONAL BANK OF KENYA**

**STAFF RETIREMENT BENEFITS SCHEME.....1<sup>ST</sup> APPLICANT**

**NATIONAL BANK OF KENYA**

**STAFF PENSION FUND REGISTERED TRUSTEES.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**RETIREMENT BENEFITS APPEAL TRIBUNAL.....1<sup>ST</sup> RESPONDENT**

**ELIAS MAINA MURIGI AND 133 OTHERS.....2<sup>ND</sup> – 84<sup>TH</sup> RESPONDENTS**

**RETIREMENT BENEFITS AUTHORITY.....85<sup>TH</sup> RESPONDENT**

**JUDGMENT**

Vide the Notice of Motion Application dated 7<sup>th</sup> March, 2017 the Ex-parte Applicants herein, National Bank of Kenya Staff Retirement Scheme (1<sup>st</sup> Applicant) and National Bank of Kenya Staff Pension Fund Registered Trustees (2<sup>nd</sup> Applicant) seek the following orders:-

1. That the Court by way of Judicial Review do issue an Order of Certiorari to remove into this Court and quash the decision made by the Retirement Benefits Appeals Tribunal at *Nairobi Civil Appeal No. 8 of 2010, Elias Maina Murigi & 133 Others Vs Retirement Benefits Authority*, National Bank of Kenya Staff Retirement Benefits Scheme and National Bank of Kenya Staff Pension Fund Registered Trustees to wit that:-

- i. The 2<sup>nd</sup> Respondent shall pay individually to each of the 83 Appellants in that application the sum in the first column set out against their respective names;
- ii. The sum payable to each of the Appellants in (i) above be reduced by any sum paid after 8<sup>th</sup> August, 2014 if any;
- iii. The 2<sup>nd</sup> Respondent does collect all the tax, if any due on such payment;
- iv. The 2<sup>nd</sup> Respondent pays interest on the outstanding balance to each Appellant at the rate earned by the scheme in each financial year until payment in full.
- v. The Appellants shall have costs of this Application abide by the outcome of the Judicial Review Case assessed at Kshs.10,000 payable by the Respondent

2. That the Court by way of Judicial Review do issue an order of mandamus directing the Retirement Benefits Appeals Tribunal to terminate further proceedings in Retirement Benefits Appeals Tribunal at Nairobi Civil Appeal Number 8 of 2010, Elias Maina Murigi & 133 Others Vs Retirement Benefits Authority, National Bank of Kenya Staff Benefits Scheme and National Bank of Kenya Staff Pension Fund Registered Trustees.

3. That the costs of this suit be awarded to the Ex-parte Applicants.

**Facts of the case**

The 2<sup>nd</sup> to 84<sup>th</sup> Respondents are former employees of National Bank of Kenya (the Bank). Prior to their separation with the Bank, they were members of the 1<sup>st</sup> Applicant, the National Bank of Kenya Staff Retirement Benefits Scheme by virtue of their employment. As such they were entitled to their pension benefits as provided in the trust deed and rules of the scheme.

Upon separation with the Bank they were paid their benefits. The 2<sup>nd</sup> to 84<sup>th</sup> Respondents protested that their pension benefits were not calculated in accordance with the scheme rules. They filed a complaint with the 3<sup>rd</sup> Respondent, the Retirement Benefits Authority, pursuant to Section 46 of the Retirement Benefits Act. The complaint was however dismissed.

Dissatisfied by the decision of the 3<sup>rd</sup> respondent dismissing their complaint, the 2<sup>nd</sup> to 84<sup>th</sup> Respondents filed Tribunal Appeal No. 8 of 2010 pursuant to Section 48 of the Retirement Benefits Act with the 1<sup>st</sup> Respondent on 23<sup>rd</sup> November, 2010. In the appeal they sought orders that the decision of the 3<sup>rd</sup> respondent be set aside and that the calculations prepared by the Appellants' Actuary be upheld and allowed. By a decision of the 1<sup>st</sup> Respondent delivered on 23<sup>rd</sup> February 2012, the Appeal was allowed in the following terms –

(a) The Appeal be and is hereby allowed for all those appellants who had presented their case and had determined by the 1<sup>st</sup> respondent:

(b) The 2<sup>nd</sup> respondent do within thirty (30) days from today calculate and give to each of the appellants and/or beneficiaries a statement of account showing in detail how the benefits due are arrived at:

(c) If the full benefit is found not to have been paid by the 2<sup>nd</sup> respondent to any appellant or beneficiary the same be paid within thirty (30) days from today in accordance with the Scheme Rules of the 2<sup>nd</sup> respondent.

(d) In default of the 2<sup>nd</sup> respondent undertaking the activities stated in (b) and (c) above or any other them within thirty (30) days from the date hereof the 1<sup>st</sup> respondent do appoint an Interim Administrator to undertake the assignment at the cost of the 2<sup>nd</sup> respondent:

(e) Each party shall bear its own costs.

(f) There shall be liberty on either party to apply.

There were several Applications made for execution thereafter. In the process, the Applicants made some payments to the 2<sup>nd</sup> to 84<sup>th</sup> Respondents who however, maintained that the said payments were not in tandem with the Judgment. They moved the 3<sup>rd</sup> Respondent to appoint an Actuary to do the computation. This was allowed and a report of the Actuary was adopted vide a ruling delivered on 8<sup>th</sup> August 2014 as follows –

(a) The actuarial report be and is hereby adopted as it is in accordance with the orders issued by the Tribunal on 25<sup>th</sup> June 2012;

(b) Subject to compliance with the Income Tax Act and/or any other statutory requirements and the variations in the Actuarial as set out below, the 2<sup>nd</sup> respondent is hereby directed to settle the appellants' individual claim in the manner set out in appendix 1 and appendix 2 and 5 at pages 21 to 34 inclusive of the Actuarial Report. The variations are:-

1. Benefits Payable under the Rules, dated 4<sup>th</sup> January 1990

(i) **Voluntary Early Retirement** – a commutation of a lump sum not exceeding Kshs.540,000.00 and the remainder be paid as a pension in periodical instalments in accordance with Rule 49 of the Rules less what has so far been paid if any:

(ii) **Normal Retirement** – a commutation of a lump sum not exceeding Kshs.540,000.00 and the remainder be paid as a pension in periodical instalments in accordance with Rule 49 of the Rules less what has so far been paid if any:

(iii) **Medical Retirement** – a sum calculated in accordance with Rules 12 and 13 less what has so far bene paid, if any;

(iv) **Death** – a sum calculated in accordance with Rule 15 less what has so far bene paid, if any;

(v) **Other Terminations (Including Redundancies, Terminations, Resignations and Dismissals on or after 4<sup>th</sup> January, 1990** - a sum calculated in accordance with Rule 16 what has so far been paid, if any;

(c) The 2<sup>nd</sup> respondent within thirty (30) days from the date hereof to furnish each of the appellants with a statement of account showing how the benefits paid or payable to calculated and arrived at:

(d) Paragraphs 14, 15.4, 16.3, 19, 22, 36, 39 and 56 of the Actuarial deleted from the records of the Tribunal;

(e) Each party shall bear its own costs.

The 2<sup>nd</sup> to 84<sup>th</sup> Respondents moved the 3<sup>rd</sup> Respondent for a decree and warrants of execution by an application dated 2<sup>nd</sup> December 2014 which was amended on 17<sup>th</sup> September 2015. In the application they sought a decree in the sum of Kshs.136,095,357 as tabulated in the application. The ruling on the application was delivered on 13<sup>th</sup> February 2017. In its Ruling, the 1<sup>st</sup> Respondent directed the Applicants to pay the 2<sup>nd</sup> to 84<sup>th</sup> Respondents their unpaid pension in accordance with the Actuarial Valuation of NBC valuers as set out in the application of the 2<sup>nd</sup> to 84<sup>th</sup> Respondents and which is set out in the said ruling. It is this ruling that is the subject of this application.

The Applicants contend that the Retirement Benefits Appeal Tribunal acted in excess of its power by delivering its Ruling on 13<sup>th</sup> February, 2017 without any prior notice to the parties save for the 2<sup>nd</sup> to 84<sup>th</sup> Respondent herein, and that they had pursuant to the 1<sup>st</sup> Respondent's Ruling delivered on 8<sup>th</sup> August, 2014, furnished the 2<sup>nd</sup> to 84<sup>th</sup> Respondent with statements of accounts showing how the benefits paid or payable were arrived at and additionally paid a sum of Kshs.13,668,306 to the Respondents who were found to have been underpaid.

The Applicants further contend that the Tribunal acted ultra vires when it delivered its Ruling on 13<sup>th</sup> February 2017 as the 2<sup>nd</sup> to 84<sup>th</sup>

Respondents never sought for the Orders issued in their Application dated 15<sup>th</sup> September 2015. That the 1<sup>st</sup> Respondent's conduct exhibited bias against the Applicants and the 85<sup>th</sup> Respondent respectively and that the decision that emanated from the impugned ruling was in gross violation of the Retirement Benefits Act and the 2<sup>nd</sup> Applicant's Trust Deed and Rules and is therefore null and void *ad initio*.

The Applicants further averred that the Institute and Faculty of Actuaries based in the United Kingdom in which Robert Oketch, was a member, had ruled that the Actuarial report prepared by the said Robert on behalf of NBC which was relied upon by the 1<sup>st</sup> Respondent in making the Orders of 13<sup>th</sup> February, 2017 was against the Trust Deed and Rules of the Applicants and the Institute proceeded to recommend disciplinary measures against the Actuary and the outcome thereof was awaited.

In the circumstances the Applicants urged this Court to quash the 1<sup>st</sup> Respondent's decision made on 13<sup>th</sup> February, 2017 and to further direct the 1<sup>st</sup> Respondent terminates its proceedings as it is *functus officio* following the Ruling on 8<sup>th</sup> August, 2014 and the consent order recorded on 8<sup>th</sup> April, 2016 which has not been set aside to date.

On their part, the 2<sup>nd</sup> to 84<sup>th</sup> Respondents contend that the Ruling of the Tribunal delivered on 13<sup>th</sup> February, 2017 which is the subject of this Judicial Review Application was delivered in open Court and that contrary to the assertion by the Applicants the same was not done in excess of 1<sup>st</sup> Respondent's powers.

The 2<sup>nd</sup> to 84<sup>th</sup> Respondents maintain that the Applicants are not challenging the Judgment delivered by the Tribunal in this matter but rather its Ruling made on Applications to give effect to the Judgment. They termed the exercise a futility filed in vain. They accuse the applicants of filing the instant application with the intention to delay them from enjoying the fruits of the Ruling entered in their favour.

They aver that the 1<sup>st</sup> Respondent has jurisdiction to hear and determine disputes by dint of Section 49 of the Retirement Benefits Act and that in doing so it correctly interpreted the law and followed the Rules of Natural Justice in delivering its Ruling.

The 2<sup>nd</sup> and 84<sup>th</sup> Respondents further contend that the Application raises issues and/or grounds that can only be raised on appeal as they touch on the merits of the case, that the instant Application is an Appeal disguised as a Judicial Review Application and is therefore incompetent and fatally defective.

The 2<sup>nd</sup> to 84<sup>th</sup> Respondents further contend that the Application is an abuse of judicial process and a waste of judicial time.

The 2<sup>nd</sup> to 84<sup>th</sup> Respondents submitted that the 1<sup>st</sup> Respondent followed due procedure while carrying out its mandate as provided under Section 48 of the RBA Act. It is further submitted that the Applicants have not proved any illegality, irrationality or procedural impropriety hence their arguments are baseless and ought to be dismissed with costs. The 2<sup>nd</sup> to 84<sup>th</sup> Respondent relied on the Court's findings in the case of ***Pastoli Vs Kabale District Local Government Council and Others (2008) 2 EA 300***.

On the issue of fair hearing, the 2<sup>nd</sup> to 84<sup>th</sup> Respondent submitted that from the record of the proceedings the Tribunal did conduct itself in a fair manner and that the Ruling was delivered in open court. It is further submitted that no party was ambushed in the proceedings of the 1<sup>st</sup> respondent and therefore the Applicants argument of bias has no basis and as such ought to be dismissed. The 2<sup>nd</sup> to 84<sup>th</sup> Respondent relied on the Court of Appeal decision in the case of ***David Sironga Ole Tukai Vs Francis Arap Muge & 2 Others (2014) eKLR***.

The 2<sup>nd</sup> to 84<sup>th</sup> Respondents further submitted that the instant case does not qualify as a matter of Judicial Review as matters of Judicial review only deal with decision making process and not the merits of the case. The 2<sup>nd</sup> to 84<sup>th</sup> Respondent relied on the case of ***Republic Vs County Government of Mombasa & Another, Ex-parte Clement Muturi Kigani (2018) eKLR***.

It is further submitted that the Applicants have not met the threshold for granting of the Orders sought in their Application as highlighted in the case of ***Kenya National Examination Council Vs Republic Ex-parte Geoffrey Gathenji Njoroge & 9 Others (1997) eKLR***.

In conclusion the 2<sup>nd</sup> to 84<sup>th</sup> Respondents urged the Court to dismiss the Application dated 7<sup>th</sup> March, 2017 with Costs to them as it fails to meet the threshold for Judicial review and is only meant to delay the recalculation and proper payment to the 2<sup>nd</sup> to 84<sup>th</sup> Respondents herein.

The 85<sup>th</sup> Respondent (The Retirement Benefits Authority) submits that there being no direct claim against it, it did not file any response to the Application. It further submits that it acted in accordance with the provisions of Sections 46 and 48 of the Retirement Benefits Authority Act while carrying out its mandate as provided therein. It further submitted that once RBA carried out its mandate its engagement in the matter automatically ceased.

### **Determination**

Judicial intervention in Judicial Review matters is limited to cases where the impugned decision was arrived at arbitrarily, capriciously or mala fides or as a result of unwarranted adherence to a fixed principle or in order to further an ulterior or improper purpose, or where the functionary misconceived the nature of the discretion conferred upon him and took into account irrelevant considerations or ignored relevant ones; or where the decision of the functionary was so grossly unreasonable as to warrant the inference that he had failed to apply his mind to the matter. Refer to the case of ***Pastoli v Kabale District Local Government Council & others [2008] 2 EA 300***.

In the application before me, the Applicants impugn the decision of the 1<sup>st</sup> Respondent on grounds that the 1<sup>st</sup> Respondent was in effect

rewriting its ruling of 8<sup>th</sup> August 2014 and also reviewed and set aside the consent orders of 8<sup>th</sup> April 2016 without hearing the application filed by the 2<sup>nd</sup> to 84<sup>th</sup> Respondents; that the 1<sup>st</sup> Respondent acted in excess of powers donated by the Retirement Benefits Act and Retirement Benefits (Tribunal) Rules 2008 by delivering two judgments in respect of the appeal, thus its actions are unconstitutional, unprocedural and amounts to double jeopardy to the applicants; that it granted orders that were never sought by the 2<sup>nd</sup> to 84<sup>th</sup> Respondents in the application dated 15<sup>th</sup> September, 2015; that the 1<sup>st</sup> Respondent delivered the impugned ruling without notice to the applicants but with notice to the 2<sup>nd</sup> to 84<sup>th</sup> Respondents; that the 1<sup>st</sup> respondent in its ruling made a finding that the applicants had not filed a response to the application filed by the 2<sup>nd</sup> to 84<sup>th</sup> Respondents when it had in fact filed a replying affidavit on 19<sup>th</sup> November 2015. That as such the 1<sup>st</sup> respondent was biased; that the 1<sup>st</sup> Respondent had no jurisdiction as this issue had already been compromised by a consent which had not been set aside; that the Actuary who prepared the Actuarial Report of NBC Holdings Limited which was relied upon by the 1<sup>st</sup> Respondent in making the impugned ruling was biased against Applicants; and finally, that the impugned ruling is in gross violation of the Retirement Benefits Act and the 2<sup>nd</sup> Applicant's Trust Deed and Rules and is a nullity.

The foregoing therefore are the issues for determination before me herein.

My understanding of the facts that gave rise to this application is that judgment of the 1<sup>st</sup> Respondent in respect of the Appeal by the 2<sup>nd</sup> to 84<sup>th</sup> Respondents, who are part of the original 134 Appellants, was delivered on 23<sup>rd</sup> February 2012. The Applicants did not contest the judgment. The judgment whose terms are reproduced herein above, required the 1<sup>st</sup> Applicant to calculate and give to each of the Appellants (2<sup>nd</sup> to 84<sup>th</sup> Respondents herein) within 30 days, a statement of account showing in detail how the benefits due to them were arrived at. That if it was found that any benefit was not paid, the 1<sup>st</sup> respondent should pay the same to the beneficiary within 30 days. That in default, the 85<sup>th</sup> Respondent do appoint an Interim Administrator to undertake the assignment at the cost of the 1<sup>st</sup> Applicant herein.

The proceedings of the 1<sup>st</sup> Respondent submitted to this court by the Applicants herein through the supplementary affidavit of HABIL WASWANI sworn on 26<sup>th</sup> April 2017 shows that there was no compliance with the terms of the judgment by the applicants herein and the report filed was signed by the CEO of the 85<sup>th</sup> Respondent (the Retirement Benefits Authority). The Tribunal in its ruling stated–

*“... we have come to the conclusion that the report miserably falls short of the order which the Tribunal made. The Tribunal was clear, concise and objective in its orders when it directed that an independent actuary is required for the Tribunal to determine the case for each of the Appellants*

*The report before us does not give the name of the actuary, does not reveal qualifications, credentials and experience to the Tribunal. It also appears that report submitted to us is restatement of what was previously submitted to us by the 1<sup>st</sup> respondent.*

*With great respect to the CEO and the 1<sup>st</sup> respondent, we regret that we are unable to accept this report. It is hereby rejected. Consequently, we direct the 1<sup>st</sup> respondent to take the appropriate steps to abide by the previous order of the Tribunal. This will assist us to arrive at a just and humane solution to this intricate matter.”*

It is on the basis of the foregoing that NBC Holdings Proprietary Limited, an Actuarial Firm, was appointed. The Actuary prepared the actuarial report in compliance with the judgment of the Tribunal. Several objections were raised about the actuarial report filed by NBC Holdings Proprietary Limited and in a ruling of the Tribunal delivered on 8<sup>th</sup> August 2014, the Actuarial Report was adopted and confirmed to be in compliance with the judgment of the Tribunal. The terms of the said ruling are reproduced elsewhere herein above.

In the application by the 2<sup>nd</sup> to 84<sup>th</sup> Respondents dated 15<sup>th</sup> September 2015, they sought to execute the judgment of the Tribunal as tabulated in the actuarial report of NBC Holdings Proprietary Limited and as approved by the Tribunal on 8<sup>th</sup> August 2014, together with interest as set out in the said ruling.

The impugned ruling is in respect of the application for execution of the judgment

of the Tribunal as tabulated in the actuarial report of NBC Holdings Proprietary Limited and adopted by the ruling of 8<sup>th</sup> August 2014. In the application the 2<sup>nd</sup> to 84<sup>th</sup> respondents expressly prayed for the NBC Value as set out in the 3<sup>rd</sup> column thereof, less the amount paid by the 1<sup>st</sup> Applicant as set out in the 4<sup>th</sup> column. They further prayed for interest on the balance value as set out in the last column.

In the ruling the Tribunal awarded only the amount in the Actuarial report as set out in the application less any amount already paid to the 2<sup>nd</sup> to 84<sup>th</sup> respondents. For clarity, I reproduce the ruling below –

- 1. The 2<sup>nd</sup> respondent shall pay individually to each of the 83 appellants in this application the sum in the first column set out against their respective names.*
- 2. The sum payable to each of the appellant in one (1) above be reduced by any sum paid after 8<sup>th</sup> August 2014, if any,*
- 3. The 2<sup>nd</sup> respondent does collect all the tax, if any due on such payment.*
- 4. The 2<sup>nd</sup> respondent pays interest on the outstanding balance due to each appellant at the rate earned by the scheme in each financial year until payment in full.*

I have deliberately set out the facts above in detail as the narrative clearly leads to the conclusion that the application by the applicants herein has no merit as the grounds in support of the application are unfounded. There is no evidence in the impugned ruling that the 1<sup>st</sup> Respondent rewrote its ruling of 8<sup>th</sup> August 2014 or that it reviewed and set aside the consent orders of 8<sup>th</sup> April 2016. There is further no evidence that the 1<sup>st</sup> Respondent acted in excess of powers donated by the Retirement Benefits Act and Retirement Benefits (Tribunal) Rules 2008 or that it delivered two judgments in respect of the appeal. There are indeed no two judgments in respect of the appeal. There is further no evidence that the 1<sup>st</sup> Respondent's actions were unconstitutional, unprocedural or amounted to double jeopardy to the applicants as averred in the application, or that it granted orders that were never sought by the 2<sup>nd</sup> to 84<sup>th</sup> Respondents in the application dated 15<sup>th</sup> September, 2015. There is also no evidence of bias as alleged or at all. I do not see how the delivery of the impugned ruling without notice to the applicants would amount to impropriety or bias to warrant the quashing of the same by orders of certiorari or mandamus as sought in the instant application.

The Applicants have further not demonstrated that the 1<sup>st</sup> Respondent had no jurisdiction or that the appeal had already been compromised by a consent which had not been set aside. I further do not see how the complaints against the Actuary who prepared the Actuarial Report of NBC Holdings Limited affected the findings of the 1<sup>st</sup> respondent, the actuarial report having been admitted by the ruling of 8<sup>th</sup> August 2014 which is not contested by the Applicants. It has also not been demonstrated by the Applicants that the impugned ruling is in gross violation of the Retirement Benefits Act and the 2<sup>nd</sup> Applicant's Trust Deed and Rules.

The 1<sup>st</sup> Respondent is a creature of Section 47 of the Retirement Benefits Act. The reason for its establishment is to hear appeals under the Act. See Section 47(1). Under Section 48(1) any person aggrieved by a decision made under the provisions of the Act or its regulations by the Retirement Benefits Authority or its Chief Executive Officer can file an appeal to the Appeals Tribunal. An appeal can also be filed in respect of any dispute between any person and the Retirement Benefits Authority as to the exercise of powers conferred upon the Retirement Benefits Authority by the Retirement Benefits Act.

Section 49 of the Retirement Benefits Act gives the 1<sup>st</sup> Respondent powers as follows:

#### **49. Powers of Appeals Tribunal**

- (1) On the hearing of an appeal, the Tribunal shall have all the powers of a subordinate court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.**
- (2) Where the Tribunal considers it desirable for the purpose of avoiding expense or delay or any other special reason so to do, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to the interrogatories within the time specified by the Tribunal.**
- (3) In its determination of any matter, the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that the evidence would not otherwise be admissible under the law relating to admissibility of evidence.**
- (4) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be paid in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.**
- (5) All summons, notices or other documents issued under the hand of the chairman of the Tribunal shall be deemed to be issued by the Tribunal.**
- (6) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may, in its discretion, admit to be heard on behalf of the party."**

The Applicants contended that the 1<sup>st</sup> Respondent without any notice delivered its Ruling in the matter which act the Applicants termed as unfair. I have perused the proceedings of the tribunal for the 13<sup>th</sup> February 2017 and note that contrary to the Applicants assertion of the Ruling being delivered without notice and not in open Court is unsubstantiated as it is clear from the proceedings the same was delivered in open court in the presence of Ms. Mwai for the Appellants.

From the evidence before me, I find that the 1<sup>st</sup> Respondent did discharge its functions as mandated under the Retirement Benefits Authority Act. I find that the applicants have not demonstrated any justifiable reasons why this Court should interfere with its findings. In the case of **Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 others [2012] eKLR** the Court held:

*"Moreover, where the proceedings are regular upon their face and the inferior tribunal has jurisdiction in the original narrow sense (that is, to say, it has power to adjudicate upon the dispute) and does not commit any of the errors which go to jurisdiction in the wider sense, the quashing order (certiorari) will not be ordinarily granted on the ground that its decision is considered to be wrong either because it misconceived a point of law or misconstrued a statute (except a misconstruction of a statute relating to its own jurisdiction) or that its decision is wrong in matters of fact or that it misdirects itself in some matter."*

Looking at the material placed before this court there is nothing to make this Court reach the conclusion that the 1<sup>st</sup> Respondent's decision was unreasonable.

Having been of the view that the decision by the 1<sup>st</sup> Respondent was lawful, the Applicants are not entitled to the Orders of Judicial Review sought as they failed to establish that the 1<sup>st</sup> Respondent misconceived the nature of the discretion conferred upon it or that it took into account irrelevant considerations or ignored the relevant ones. Further, the Applicants have failed to establish that the 1<sup>st</sup> Respondent's decision was so grossly unreasonable as to warrant the interference as sought in the instant application. I agree that this is an Appeal disguised as a Judicial Review Application as submitted by the 2<sup>nd</sup> to 84<sup>th</sup> Respondents.

In the circumstances, the Application fails in its entirety and is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 31<sup>ST</sup> DAY OF JANUARY 2020**

**MAUREEN ONYANGO**

**JUDGE**