



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 57OF 2014**

[Formerly Mombasa H.C.C.C No. 149 of 2003]

**BETWEEN**

1. MWINYI HAJI MWINZANGU
2. SALIM RASHID KUDEMA
3. RAJABU MWABWAKU
4. ALI AMRI [deceased/unsubstituted]
5. M.M.KUKURU [deceased/unsubstituted]
6. KAZUNGU KATANA
7. ABDILLAH MUHUDHARI [deceased/unsubstituted]
8. HUSSEIN KASSIM KIJIKO [deceased/ unsubstituted]
9. HAMAD MOHAMMED [deceased/unsubstituted]
10. KENGA KARISA
11. JUMA BAKARI FISI
12. KAHINDI NGUNZA
13. ABDALLAH HAMISI FUJO [deceased/unsubstituted]
14. SAID AWADH [deceased/ unsubstituted]
15. MWASIWA ABDALLA MACHAFU [deceased/unsubstituted]
16. JUMA SELEMANI MAHELA
17. RASHID H. SAQDIQ
18. OMARI SALIMU DETE [deceased/unsubstituted]
19. ABDALLAH ALI MOHAMED [deceased/unsubstituted]
20. H. KASIM [deceased/ unsubstituted]
21. KEYA HAMISI

22. FIRI SADI
23. MOHAMED HAMISI
24. JUMA SALIM MWAGOGO
25. BAKARI SAGO MWARAMOYO
26. SULEIMANI MASUDI
27. KISAUMBI M. KALA [deceased/unsubstituted]
28. SWALEHE MWAFUMBE [deceased/unsubstituted]
29. MOHAMED KOMORO [deceased/unsubstituted]
30. KARAGO NJIRU NCHERE [deceased/ unsubstituted]
31. CHARO KENGA [deceased/unsubstituted]
32. M. TASIGWA [deceased/unsubstituted]
33. MASOUD MOHAMMED [deceased/unsubstituted]
34. USTADH KHAMISI
35. R.KISWILI [deceased/unsubstituted]
36. BAKARI HAMISI MWACHANZE [deceased/unsubstituted]
37. YUSUF SHEE HAMAD
38. WAROSHO MCHONJI [deceased/unsubstituted]
39. MOHAMMED JUMA SITAMBULI
40. RAJABU STUMA [deceased/unsubstituted]
41. M.M. RAMOYO
42. SAIDI JUMA
43. ISSA ALII
44. RAJABU KOMBO [deceased/unsubstituted]
45. MATUTU NZOMO [deceased/unsubstituted]
46. HAMISI ATMANI [deceased/unsubstituted]
47. CHARO KOI
48. KARISA KENGA [deceased/unsubstituted]
49. SUDI HAMAD MALUMBO [deceased/unsubstituted]
50. MOHAMED HASSAN KISUSE [deceased/ unsubstituted]
51. R.OKOTH
52. SULEIMAN O. KOMBO [deceased/unsubstituted]
53. ALI SHAKOMBO [deceased / unsubstituted]

54. RAMADHAN KIBWANA

55. MWACHIA KIUTE [deceased/ unsubstituted]

56. MASUDI RASHID

57. OMARI MOHAMMED MWAPESA[deceased/unsubstituted]

58. KEA SHAKOMBO

59. JUMA SALIM

60. MWINYI ALI MWAZIMU

61. OMARI MWATABU.....CLAIMANTS

VERSUS

KENYA PORTS AUTHORITY.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

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L.N. Momanyi & Company, Advocates for the Claimant

Mohammed Muigai, Advocates for the Respondent

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### JUDGMENT

#### Pleadings and File History

1. This Claim is quite old, and the Claimants quite old, with a good number of them, having unfortunately passed away, before proceedings closed.
2. The Claim was filed at the High Court of Kenya in Mombasa, some 17 years ago. It was forwarded to the Employment and Labour Relations Court, Mombasa in 2014 by the High Court for trial and disposal, ostensibly on the ground that the High Court no longer had jurisdiction in employment disputes.
3. Several of the original Claimants have died. They have not been substituted, as indicated in the title to the Claim above. A list filed by the Claimants on 30<sup>th</sup> March 2017, shows 34 of the Claimants are deceased, with the surviving Claimants being 28. ***The claims by the Claimants indicated as deceased, have abated.***
4. The record however is far from clear on the exact number of Claimants who brought this Claim, and who has left. The list of deceased Claimants filed on 30<sup>th</sup> March 2017, includes one Mutambuki Simba Mwingi. The Court has not been able to find this name, in the Plaintiff. Secondly, there is on record Request for Particulars made upon the Claimants by the Respondent, dated 29<sup>th</sup> October 2006. In response, the Claimants' then Advocates, Chidzipha & Company Advocates, filed a list of 87 Claimants, dated 18<sup>th</sup> April 2007. There are 62 Claimants including the deceased ones, named above. Some of the Further Statements of Witnesses filed on 19<sup>th</sup> June 2019 on behalf of the Claimants, are in the names of persons who claim to be Claimants, but are not in the Plaintiff. Abdallah Kitupa Tuji, Shakur Abdallah, Mohammed Abushiri Mohammed and Asgerali Alibhai Adamjee are some of the persons who filed Witness Statements, alleging to be Claimants herein. The Court has not found their names in the Plaintiff, or seen orders bringing them into the proceedings, made either by the High Court, or the E&LRC. Another person purporting to be a Claimant, who gave his name as Swaleh Mohammed Mbovoko, was presented before the Court on 3<sup>rd</sup> October 2019 to give evidence. The Court noted he was not listed among the Claimants in the Plaintiff, and denied him audience. The Claimants referred throughout the proceedings, to Mwinyi Haji Mwinzangu & 61 others, as named in the Plaintiff. The change in representation of the Claimants; the delay in hearing and disposal of the Claim; the passing away of some Claimants and advancement in age of the surviving ones; and transfer from the original forum; appears to have militated against an orderly record.
5. The surviving Claimants state they were employed by Kenya Cargo Handlers Limited, which merged with the Kenya Ports Authority in 1986. They had at the time of merger, worked for as many as 18 years for the former.
6. They aver, the Respondent agreed to absorb them, upon merger, as Employees of the Respondent. They were to move to the Respondent on terms and conditions of employment enjoyed while at Kenya Cargo Handlers Limited.

7. They worked after merger for the Respondent, for periods ranging from 13 to 19 years, before retirement. They aver, upon retirement, the Respondent grossly underpaid their **gratuity** and other **legal entitlements**. Secondly, they were denied the right to **belong to Respondent's Pension Scheme**, and to draw pension from the scheme, which they merited by dint of their service.

8. The Claimants pray for Judgment against the Respondent for:-

- a. A declaration that the Claimants were and are entitled to, and should be paid pension by the Respondent.
- b. An order that the Respondent does calculate and pays to the Claimants the proper and legal amount of gratuity together with arrears of pension from the date of retirement to-date.
- c. Costs
- d. Any other suitable relief.

9. The Respondent filed its Statement of Defence on 29<sup>th</sup> August 2003. It is admitted that the Claimants were employed by Kenya Cargo Handling Services Limited. The merger of this company with the Respondent, around 1986 is admitted. The Respondent denies to have underpaid Claimant's gratuities. It did not decline to have the Claimants in its Pension Scheme as alleged. They were paid their retirement benefits, in accordance with the merger document, staff regulations and pension regulations. They were paid all their legal entitlements, upon attainment of mandatory age of retirement. The Respondent further submits that the Claim is time-barred under the Kenya Ports Authority Act Cap 391 the Laws of Kenya, and is incompetent for failure to issue statutory notice to the Respondent, before filing of the Claim.

#### **Claimants' Evidence.**

10. Claimant Number 3, Rajabu Mwambwaku, opened the hearing for the Claimants on 4<sup>th</sup> October 2018. He told the Court that he worked for Kenya Cargo Handling Services Limited [Kenya Cargo] for 22 years. Kenya Cargo did not pay terminal benefits on merger, neither did KPA on retirement. Rajabu was just paid transport/ luggage allowance on retirement. The Claimants seek to be paid their dues under Kenya Cargo and KPA. He adopted the documents filed by the Claimants and his Witness Statement as his evidence.

11. Cross-examined, he told the Court that he worked for 22 years, beginning 1963. He joined KPA in January 2005. He was 41 years on joining KPA. He was issued a card by KPA showing he is a Pensioner. It was issued by the Personnel Manager. The card states, its holder is allowed to access the Port. It does not say the holder would be entitled to pension. He worked for KPA for 14 years. He was not issued a letter by KPA to say he was permanent and pensionable. He did not make pension contributions. He did not know if the Kenya Ports Authority Pension Scheme, which manages pension, is a different entity from KPA. He did not receive any statement of accounts from the KPA Pension Scheme. He was paid Kshs. 194,951 on retirement. It was indicated to be retirement gratuity. Rajabu told the Court this was his fare home. He did not know that he cannot receive pension and gratuity in the same breath. Redirected, Rajabu told the Court he did not sign any agreement on changeover from Kenya Cargo to KPA. The card issued to him was not a mere gate pass.

12. Claimant Number 1, Mwinyi Haji Ali Mwinzangu adopted his Witness Statement, which is in much the same language as the evidence of Rajabu above. He too was only paid fare home, at the end of service first with Kenya Cargo and lastly KPA.

13. Cross-examined, his position was that he worked for Kenya Cargo from 1960 to 1998, and for KPA from 1998. He worked for Kenya Cargo temporary, for 10 years. He did not understand what permanent and pensionable employment is. He did not make monthly pension contributions. He did not recall how old he was, when he joined KPA. KPA paid him some money on retirement. He did not recall how much. The card issued to him by KPA states he should be paid pension. He did not read what was inscribed in the card. He did not know that the card merely enabled him to access the Port. Redirected, he told the Court that the card said he was a 'Pensioner.' KPA paid him relocation allowance.

14. Claimant Number 32, M. Tasigwa, similarly adopted his Witness Statement and documents filed by the Claimants in his evidence. He was a permanent and pensionable Employee of Kenya Cargo. He worked for KPA for 14 years, and 17 years for Kenya Cargo. He was issued a Pensioner's card. He was not paid pension, but was only paid relocation allowance on retirement.

15. On cross-examination, Tasigwa told the Court he did not have any letter from the Respondent, advising that he would be paid pension. His salary had deductions. He was told this was pension contribution. He did not recall the amount deducted. He recalled it was Kshs. 1,400 monthly. This was made for 6 months before he was retired. He did not know if there was a pay slip on record, showing this deduction. He was paid an allowance to transport his household goods home on retirement.

16. Claimant Number 12, Kahindi Ngunza, associated himself fully with the evidence given by his colleagues. He was employed by Kenya Cargo in 1967. He was permanent and pensionable at Kenya Cargo. He was retired by KPA and denied pension. He was issued a card by KPA showing he was a Pensioner. Cross-examined, he told the Court that he worked for KPA for 14 years. He did not receive any communication from KPA indicating he was to receive pension. He paid pension contributions for 7 years. Ngunza told the Court in the same breath, that he did not pay pension contributions. He did not have pay slips in Court. Deduction of approximately Kshs. 1,000 monthly, was made from his salary in pension contribution for 6 months. Redirected, Ngunza told the Court his pay slip on record showed he made pension contribution of Kshs. 800 monthly.

17. Claimant Number 10, Kenga Karisa, continued with the presentation of evidence for the Claimants, on 5<sup>th</sup> March 2019. He initially worked for Kenya Cargo. He was not paid terminal dues on leaving Kenya Cargo. He retired from KPA and was issued Pensioner's card. He worked for a cumulative 36 years for Kenya Cargo and KPA. He told the Court on cross-examination that he could not recall when he started working for Kenya Cargo. He started working for KPA in 1985 and retired in 1998. He did not have any document to say he was to receive

pension from KPA. He did not contribute to KPA Pension Scheme. The card issued to him shows he was a member of the Pension Scheme. His case is that the card allows him to receive pension. It was issued on retirement in 1998. He was paid luggage allowance of Kshs. 126,830 on retirement. Many Employees crossed over from Kenya Cargo to KPA. They understood they would be permanent and pensionable upon the cross-over.

18. Claimant Number 26 Suleimani Masudi, and Claimant Number 16 Juma Suleimani gave evidence on 3<sup>rd</sup> October 2019, closing the Claimants' case. Their evidence was not dissimilar to that of the other Claimants recorded above. Masudi stated he made pension contributions of Kshs. 1000 monthly, but did not have pay slips in Court, reflecting this deduction. He had a Pensioner's card. He did not have a letter showing that he was a member of the KPA Pension Scheme. He was paid Kshs. 200,000 as gratuity. Juma worked as supervisor for KPA. He was paid gratuity on retirement by KPA. He too was issued a Pensioner's card.

### **Respondent's Evidence.**

19. Retired KPA Pension Administrator, Maurice Milimu Amahwa, gave evidence for the Respondent on 3<sup>rd</sup> October 2019 and 4<sup>th</sup> October 2019, when hearing closed.

20. He told the Court, he worked for KPA for 34 years, in different roles. He was KPA Pension Fund Manager from 2000. KPA has a Pension Scheme. It is a contributory Scheme. The Employer pays 22.5% and the Employee 7.5% -total 30% of the Employee's salary monthly.

21. Human Resource Department must issue a letter to the Scheme showing the member is permanent and pensionable. All members have this letter. The Claimants did not at any time have the letter. Trainees are given the letter 1 year after engagement. Other Employees are given the letter after certain events have taken place, such as promotion. It is a Defined Benefits Scheme. Benefits are paid based on the number of years worked, and the salary last earned. The retiree is paid  $\frac{1}{4}$  of the pension, while  $\frac{3}{4}$  is deferred benefits, for the life of the retiree.

22. A non-member cannot earn pension under the Scheme.

23. Kenya Cargo Handling Services Limited had 3 Retirement Benefits Schemes- Casual Workers', Provident Fund, and Pension Scheme. The Claimants were Casuals while in Kenya Cargo. KPA did not have Casual Workers.

24. Kenya Cargo and KPA merged in 1985. Kenya Cargo Scheme and Provident Fund continued after merger. The terms of merger required one to have worked for 10 years, under KPA to become a member of its Pension Scheme. One had to become permanent and pensionable to be eligible for pension.

25. Through a CBA negotiated between Claimants' Trade Union, Dock Workers Union, and KPA, it was agreed that the Employees from Kenya Cargo would not have to work for 10 years to earn pension; they would instead be paid gratuity. This applied to those who were over 40 years at the time of the merger.

26. Those 40 years and below were taken in [Amahwa was not clear in this evidence what he meant by taken in]. He told the Court however, that this arrangement is contained in clause 24 of the CBA.

27. The card exhibited by the Claimants, is issued to all retirees of the KPA. It is a port pass. The terms and condition of its issuance are stated on the card. It does not entitle the holder to claim pension.

28. Amahwa explained that Pension Schemes are like the famed 'chamas' [social groups where participants pool and share funds]. One has to contribute to benefit. The Claimants did not contribute. They were paid gratuity. Retirement Benefits Regulations earlier allowed for payment of non-contributory pension. These Regulations changed. KPA therefore paid pension contributions initially, but recovered the same from some Claimants, which is indicated as pension contribution from some of the pay slips. This was an arrangement made between the Trade Union and the KPA. Contribution was an error which was rectified through this arrangement. This happened between 1987 and 2000, before RBA Regulations changed. The net result is that the Claimants did not lose any money.

29. Cross-examined, Amahwa told the Court he worked as Fund Manager, not Human Resource Manager. He is aware that the Claimants seek pension. He did not participate in the merger process. He did not sign any merger document. He was aware that, the Claimants worked continuously for Kenya Cargo and KPA. Previous mandatory retirement age was 50 years, before adjustment to 55 years in public service. He was aware of the CBA between Claimants' Union and the KPA.

30. The CBA required the Respondent to issue notices of retirement of 3 months to the Claimants. The notices exhibited by the Respondent stated they would be paid retirement benefits, not gratuity.

31. Pay slips shows Claimants made pension contributions. They were issued Pensioner Cards. Port visitors are issued port passes.  $\frac{1}{4}$  pension is paid in lump sum, while  $\frac{3}{4}$  is deferred for the lifetime of the retiree. What was paid to the Claimants and characterized as gratuity was not the  $\frac{1}{4}$  of their pension. It was gratuity. The Claimants operated on and off. Amahwa did not have any records showing the Claimant were in casual employment. He did not have evidence of Casual Workers, Provident Fund or Pension Scheme of Kenya Cargo. The Respondent did not take advantage of the old Claimants/ Employees.

32. Redirected, Amahwa told the Court that the Claimants pleaded at paragraph 6 of the Complaint, that they were paid gratuity. They complain about the size of the gratuity paid. They complain about exclusion from the Pension Scheme. They could not be paid pension and gratuity at the same time. Amahwa was the custodian of pension records, and had sight also, of the Kenya Cargo records. The Pension Scheme is a

different entity from the KPA. Voluntary retirement age is 50 years. Mandatory retirement age was 55 years at the time the Claimants left employment. The ones who were 40 years and below, became permanent and pensionable. The ones above 40 years became permanent, but not pensionable. The pay slip at page 91 of the Respondent's documents shows the Employee made pension contribution of Kshs. 1,124. The same amount was recovered in the same pay slip. There was zero effect. It was an error on the part of the KPA which was rectified. [The Court made a note that the pay slip under reference does not relate to any of the Claimants]. The cards issued to the Claimants were port passes. Retirement letter referred to retirement benefits, which covers pension, provident funds and gratuity.

### Submissions.

33. The Claimants submit that it is not disputed, they were Employees of Kenya Cargo Handling Services Limited, before their Employer merged with KPA. Kenya Cargo had a Pension Scheme as evidenced by Kenya Cargo Handling Services Limited Staff Pension Scheme Rules, on record. The Claimants' pay slips had provision for pension contribution. The Respondent was at a loss in explaining that contribution made constituted an error, which was corrected. Pension earned was transferred to KPA Scheme on merger. Payment of gratuity did not bar access to pension. The Claimants urge the Court to find that they were permanent and pensionable Employees of the KPA, and deserving of pension. The Respondent should calculate and pay the correct gratuity, and pay arrears of pension as prayed.

34. The Respondent submits that the Claim was filed to a Court without jurisdiction, and transfer to the E&LRC did not cure the defect. The Claimants were never members of the KPA Pension Scheme, which is a contributory scheme. They were entitled to gratuity, which was paid to them. The Respondent is not a pension Scheme. The Scheme is a separate legal entity. If they were members of the Scheme, their action lies against the Scheme, not the Respondent. The Claim is time-barred under Section 66 of the KPA Act. It was not commenced within 12 months after the cause of action arose. The last Claimant retired in 2001. The Claim was presented at the High Court in 2003. The Respondent relies on *Kenya Ports Authority v Cyrus Maina Njoroge [2018] e-KLR* where the Court of Appeal upheld limitation under Section 66 of the KPA Act. Further, the Respondent submits, that even the E&LRC to which the Claim was transferred from the High Court, is divested of jurisdiction in pension disputes. The Respondent relies on a recent Supreme Court of Kenya decision in *Albert Chaurembo Mumba & 7 Others v. Maurice Munyao & 148 Others [2019] e-KLR*, where it was held that:

“we do not see how a pensioner falls within the listed category of persons that can make an application on institute proceedings before the Court [Employment & Labour Relations Court]. From the foregoing, it is thus clear that the Employment and Labour Relations Court, had no jurisdiction to hear and determine a dispute that relates to trustees of a pension scheme and members of the scheme, particularly where the said members are no longer employees of the sponsor.” Further, the Supreme Court pronounced that, “the RBA Act was enacted in the year 1997 and was in existence at the time the suit was filed. It is our view, as already stated earlier in this Judgment that the RBA Act mechanism was applicable...”

By the time the present Claim was filed at the High Court, the RBA Act dispute resolution mechanism was applicable. The Supreme Court also upheld the autonomy of Pension Schemes from their Sponsors. Lastly the Respondent submits that the Claimants were not members of the KPA Pension Scheme. They were paid correct gratuity under the KPA [Pensions] Regulations 1983. They could not get gratuity and pension together, under the Regulations.

### Issues

- Whether the Court has jurisdiction under the KPA Act and the RBA Act.
- Whether Claimants were members of the KPA Pension Scheme and entitled to pension.
- Whether the Claimants were correctly paid gratuity, and whether they were entitled to both gratuity and pension.
- Who should pay costs of the Claim?

### **The Court Finds:-**

35. It is absolutely necessary, to answer the first issue on jurisdiction of this Court, for without jurisdiction, the Court has no business in delving into the rest of the issues. In *Samuel Kamau Macharia v. Kenya Commercial Bank & 2 Others [2012] e-KLR*, the Supreme Court of Kenya emphasized that without jurisdiction, a Court cannot entertain any proceedings.

36. The Respondent submits this Court does not have material, personal and temporal jurisdiction. In short, the Court cannot adjudicate a pension dispute; sponsors and members of pension schemes are not subject to the adjudication of the Court; and the time to bring the Claim to Court, assuming the Court had personal and material jurisdiction in the first place, had lapsed before the Claim was initiated.

37. On temporal jurisdiction, the Court of Appeal has determined that Claims against the KPA by its Employees, must be brought within a period of 12 months from the date the cause of action accrues, under Section 66 of the KPA Act [see *Court of Appeal decision in Kenya Ports Authority v. Cyrus Maina Njoroge [2018] e-KLR* and *E&LRC in Mudhari T. Anwar v. Kenya Ports Authority [2019] e-KLR*].

38. The Claimants have not disputed that the last one of them, retired some time in 2001, and they filed their Claim at the High Court Mombasa, in 2003. This was well beyond the limitation of 12 months, created under Section 66 of the KPA Act.

39. On material jurisdiction, the Supreme Court in *Albert Chaurembo Mumba & 7 Others v. Maurice Munyao & 148 Others [2019] e-KLR*, was unequivocal, that pension disputes are not in the province of the Courts, whether it is the High Court or the E&LRC. The Supreme Court was emphatic that Courts cannot usurp the jurisdiction of the RBA mechanism in pension disputes. The E&LRC therefore lacks material jurisdiction to hear and determine pension disputes, following this decision of the Supreme Court.

40. It must be underscored that the decision arose out of a decision of the Court of Appeal of Kenya, which had upheld the jurisdiction of the E&LRC in pension disputes. The original dispute involved KPA Pensioners, and Parties herein must therefore be familiar with the

sentiments of the Supreme Court on the subject.

41. On personal jurisdiction, again the Court must cite and defer to the Supreme Court in the above decision. The current dispute is brought by former Employees of Kenya Cargo Handling Services Limited, who in 1986, transitioned under Section 74A of the KPA Act to KPA, upon the amalgamation of the 2 entities.

42. The Claim is based on the Claimant's view, that they were entitled to receive pension from the KPA Pension Scheme, having been absorbed as Employees of KPA, upon amalgamation. They claim, they made contributions to the KPA Pension Scheme.

43. The dispute is brought by Employees who claim they were members of, or at the very least, beneficiaries under the KPA Pension Scheme. The Supreme Court was clear that disputes involving pensioners/ members, sponsors, and the pension schemes, must be taken before the RBA mechanism. The question whether Claimants were members of, or in any way beneficiaries under, the Pension Scheme, cannot be answered here. The E&LRC does not have jurisdiction to entertain a dispute involving former Employees, who allege to have been members/ beneficiaries under the KPA Pension Scheme and their sponsor KPA.

44. Related to personal jurisdiction is the joinder of the sponsor KPA to this Claim. The Supreme Court states that “ ***the E&LRC did not have jurisdiction to determine and hear a dispute that relates to trustees of a pension scheme and members of the scheme, particularly where the said members are no longer employees of the sponsor.***” The Court does not have personal jurisdiction over the KPA in this dispute, because KPA is joined to the Claim, as a sponsor rather than an Employer or Administrator of the Pension Scheme. KPA is sued by persons who are no longer its Employees. The Claimants submitted nothing on jurisdiction. The Respondent was left to have a freehand on this focal subject.

45. The prayer for recalculation of gratuity, and payment of any balance to the Claimants, is tied down to the question whether they were entitled to pension and gratuity. Pursuit of any balance in gratuity cannot be severed from pursuit of pension. The prayer for gratuity even if severable is caught up in limitation of time. Even assuming gratuity was underpaid, the Claimants did not identify to the Court how it was underpaid, and what the correct mode of computation should have been.

46. The Court is persuaded it does not have temporal, material and personal jurisdiction to hear and determine the dispute.

47. Ultimately, the remainder of issues listed above, are not before the right forum for determination, in line with the Judgment of the Supreme Court. The E&LRC would be engaging in a futile judicial exercise if it were to proceed to answer the remaining issues in dispute.

48. It is unfortunate that the position on the jurisdiction of this Court has changed only while the Claim was pending, and a lot of time wasted taking the elderly Claimants through the motions of a judicial hearing. Justice would perhaps have been served, if they had approached the RBA mechanism in the year 2003. They have wasted 17 years in the corridors of our Courts, and a majority of them are dead without having seen a closure of the proceedings, something this Court cannot correct, but can only profoundly regret.

49. Following in the footsteps of the Supreme Court, this Court may well have remitted the matter to the adjudication of the Chief Executive Officer of the Retirement Benefits Authority under the mechanism contained in the Retirement Benefits Act, for adjudication.

50. But the Claim herein is against the sponsor, rather than the trustees of KPA Pension Scheme. It was also presented well after the time-limit set under Section 66 of the KPA Act, making a valid reference legally doubtful. It cannot be referred to RBA mechanism, without the trustees. The Court can only, with regret, strike out the Claim for want of jurisdiction.

51. Lastly, the Court must record that it has been compelled to release this Judgment from the confines of the Trial Judge's home at Chaka, Nyeri County, owing to covid-19 pandemic. It is noted that the Hon. the Chief Justice has directed all pending Judgments are delivered by 30<sup>th</sup> May 2020. Other modes of delivery are neither failsafe, nor safe to the participants in the proceedings. Rule 28 of this Court's Procedure Rules requires delivery of decisions in Open Court. This cannot be achieved under the present circumstances, in particular because the KPA and Mombasa City where the Trial Court is domiciled, have been identified as hotbeds of covid-19 by health authorities. Whereas the wheels of justice must roll on, lives must not be placed at risk. The Court must resort to Rule 38, and take control of its proceedings. The Judgment shall be accessible to the Parties from the Registry, and as soon as practicable, through the Kenya Law Reports web portal.

IT IS ORDERED:-

- a. The Claim is hereby struck out for want of jurisdiction.**
- b. Claims by deceased Claimants are deemed to have abated.**
- c. No order on the costs.**

**Dated, signed and released at Chaka, Nyeri County, for dispersal to the Parties this 29<sup>th</sup> day of May 2020.**

**James Rika**

**Judge**