



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE 558 OF 2019**

(Before Hon. Justice Hellen S. Wasilwa on 30<sup>th</sup> July, 2020)

ALICE OKALLO.....CLAIMANT

VERSUS

KENYA MEDICAL RESEARCH INSTITUTE.....1<sup>ST</sup> RESPONDENT

KENYA MEDICAL RESEARCH INSTITUTE STAFF

PENSION & LIFE ASSURANCE SCHEME.....2<sup>ND</sup>RESPONDENT

**RULING**

1. Before this Court is the Respondents' Preliminary Objection dated 7/10/2019 and their Application dated 2/3/2020.
2. The Applicant seeks the following orders in their application-
  - a) *THAT the Claimant's suit be struck out.*
  - b) *THAT in the alternative to (1) above, the Claimant's claim for pension be struck out for want of jurisdiction.*
  - c) *THAT the costs for this Application and for the suit be awarded to the Applicants.*
3. The Application is based on the grounds set out on the face of the motion and the Supporting Affidavit of Gachuhi Mungai sworn on 2/3/2020. The grounds set out in the motion are similar to those set out in the grounds of opposition.
4. The Claimant/Respondent has opposed this Application vide her Replying Affidavit sworn on 16/3/2020.

**The Applicant's Case**

5. The Applicants aver that the Claimant/Respondent is a former employee of the 1<sup>st</sup> Applicant but continues to occupy the 1<sup>st</sup> Applicant's premises rent free from the date of her retirement. As such, the claim relating to the house and/or any right as a tenant of the 1<sup>st</sup> Respondent should have been lodged before the Civil Division of the High Court.
6. The 1<sup>st</sup> Applicant avers that the Claimant/Respondent was invited to a meeting vide the letter dated 8/8/2019, to discuss her occupation of the house as she was no longer an employee of the 1<sup>st</sup> Applicant.
7. The Applicants aver that the Claimant/Respondent's primary claim relates to pension and is a pension dispute on her pension contribution under the 2<sup>nd</sup> Applicant's Staff Pension & Life Scheme. As such, there are mechanisms set out in the Retirement Benefits Act, 1997 to resolve such disputes.
8. As such, this Court lacks the jurisdiction to entertain this matter and it will be in the interest of justice that the orders sought be granted.

**The Claimant/Respondent's Case**

9. The Claimant/Respondent admits that she is the 1<sup>st</sup> Applicant's former employee. She contends that this claim was necessitated by the Respondent's failure to remit her monthly pension contributions to the benefits scheme managed by the 2<sup>nd</sup> Applicant, resulting to an unpaid pension amount of KShs. 3,748,754.03 as at 30/6/2018.

10. She avers that she has no claim against the 2<sup>nd</sup> Applicant but who is vital to this suit as they will help this Court in determining the dispute between her and the 1<sup>st</sup> Applicant.

11. The Claimant/Respondent contends that the Retirement Benefits Act as cited by the Applicants is inapplicable to this claim as this dispute relates to pensions deducted from her salary but never remitted to the 2<sup>nd</sup> Applicant. It is her position that Sections 46 and 47 of the Act is only applicable to disputes relating to any member of a scheme and the manager, administrator, custodian or trustee of the scheme.

12. It is contended that the Claimant/Respondent continues to stay in the 1<sup>st</sup> Applicant's staff quarters as she awaits settlement of her pension dues so as to facilitate her moving out from the said quarters. It is further averred that the 1<sup>st</sup> Applicant's housing policy allows its former employees to stay in staff quarters pending payment of their final dues.

13. The Claimant/Respondent avers that the 1<sup>st</sup> Applicant has been unlawfully accumulating rent arrears which they have threatened to deduct from her unremitted pension deductions. She is apprehensive that the 1<sup>st</sup> Applicant will evict her from the staff quarters without paying her pension dues, having threatened to do so.

14. It is her position that this Court has the jurisdiction to hear and determine the issues raised in this claim hence the objection to this Court's jurisdiction is baseless and should be dismissed.

### **The Applicant's Submissions**

15. The Applicants submit that this Court does not have the jurisdiction to hear this matter as the claim relates to a pension dispute under the 1<sup>st</sup> Respondent's Staff Pension & Life Scheme which is regulated by the Retirement Benefits Act that provide the dispute resolution mechanism for such matters.

16. Further, pursuant to Section 12 of the Employment and Labour Relations Court Act this Court lacks the jurisdiction to hear this matter as the Claimant is no longer an employee. They rely on the Supreme Court cases of **Albert Chaurembo Mumba & 7 Others vs. Maurice Munyao & 148 Others [2019] eKLR**, **Samuel Kamau Macharia & Another vs. KCB & 2 Others [2012] eKLR** and a wide range of cases to fortify this position.

17. The Respondents further submits that the Retirement Benefits Act does not clothe this Court with the jurisdiction on matters or disputes relating to pension as was held in the Court of Appeal **Civil Appeal 20 of 2017; Staff Pension Fund & Kenya Commercial Bank Staff Retirement (DC) Scheme 2006 & Another vs. Ann Wangui Ngugi & 524 Others [2018] eKLR**. It is their position that the procedure for lodging complaints and filing appeals is out in Sections 46 and 47 of the Retirement Benefits Act.

18. The Respondents submit that the Claimant has not exhausted the procedure outlined in Sections 46 to 49 of the Retirement Benefit Act which ought to be first exhausted before the Claimant can seek redress from this Court as was held in the cases of **Geoffrey Muthinja & Another vs. Emmanuel Muguna Henry & 1756 Others [2015] eKLR** and **Bethwell Allan Omondi Okal vs. Telkom (K) Limited (Founder) & 9 Others [2017] eKLR**.

19. There is no record of the Claimant/Respondent's written submissions in the Court file. However, the following cases were cited by the Claimant/Respondent in her Replying Affidavit, in support of her case: **Albert Chaurembo Mumba & 7 Others vs. Maurice Munyao & 148 Others [Supra]**, **Abdullahi Ali Mohammed vs. Kenya Ports Authority & Another [2016] eKLR** and **Betty U Chamba vs. Kenya Ports Authority & Another [2019] eKLR**.

20. I have considered the averments of both Parties in this application.

21. It is true that this Court has no jurisdiction in matters of pension as held by Court of Appeal in **Civil Appeal 20/2017 Staff Pension Fund & KCB Staff Retirement (DC) Scheme 2006 and Another vs Anne Ngugi & 524 Others (2018) eKLR** (supra) above.

22. Issues which fall outside the ambit of the Employment and Labour Relations Court (ELRC) however are set out under Section 46 to 49 of the Retirement "Benefits Act.

23. Section 46 of the Retirement Benefits Act states as follows:-

***1) Any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or the Act under which the scheme is established.***

***2) A copy of every request under this section shall be served on the manager, administrator, custodian or trustees of the scheme.***

24. The matter under Section 46 of the Retirement Benefits Act relate to a dispute between a member and a manager administrator, custodian or trustee of the Scheme. Such matters are handled by the Retirement Benefits Appeals Tribunal.

25. In relation to this Claim, the Claimant's claim relates to moneys not remitted to her pension account by her employer, the 1<sup>st</sup> Respondent. The Claimant's claim therefore emanates from her contract of employment and she avers that the employer failed to remit her pension dues to her pension scheme. The claim is therefore not a dispute about pension but about a breach in the employment contract.

26. That being the position, this claim is distinguishable from the authorities cited where the dispute emanated from failures on the part of the pension scheme administrator.

27. In the circumstances, I find the Preliminary Objection in relation to this Court's jurisdiction has no merit and I dismiss it accordingly. I direct that the claim therefore proceeds before this Court.

28. Costs in the cause.

**Dated and delivered in Chambers via zoom this 30<sup>th</sup> day of July, 2020.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Omwenga for Claimant/Respondent – Present

Rotich holding brief Munge for Applicant/Respondent